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No. 93-1152

In The Supreme Court Of The United States
October Term, 1993

C. William Garratt,
Petitioner,

v.

Eddie M. Morris, Edsel Morris,
and Donna Piotrowski,
Respondents.

Brief In Opposition To Petition For Writ Of Certiorari To The Michigan Supreme Court

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QUESTIONS PRESENTED FOR REVIEW

1.

WHETHER THE MICHIGAN SUPREME COURT PROPERLY INTERPRETED ITS OWN COURT RULE, MCR 2.114, AS WARRANTING SANCTIONS AGAINST AN ATTORNEY THAT FILES ANY FALSE DOCUMENTS, INCLUDING ANY MOTION OR AFFIDAVIT, WITH A MICHIGAN COURT.

2.

WHETHER PETITIONER GARRATT, AN ATTORNEY, WAS DENIED DUE PROCESS AFTER A FINDING WAS MADE THAT HE HAD FILED FALSE AND FRIVOLOUS PLEADINGS FOR THE IMPROPER PURPOSE OF HARASSMENT AND VEXATION.

3.

WHETHER THE MICHIGAN COURT OF APPEALS HAD AN OBLIGATION TO DECIDE PETITIONER'S "ALTERNATIVE" ARGUMENTS.

4.

WHETHER PETITIONER GARRATT SHOULD BE SANCTIONED FOR MAKING FALSE STATEMENTS IN HIS CERTIORARI PETITION TO THIS COURT.

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INTRODUCTION

One thing is quite clear from Petitioner's petition to this Court, namely that Petitioner C. William Garratt (sometimes "Garratt") has continued his consistent pattern of brashly lying to courts. The *certiorari* petition contains a host of such lies, and this Court should consider sanctions for that petition.

In any event, there is no valid constitutional argument or consideration presented by Garratt's *certiorari* petition. Indeed, there is no legitimate argument raised that would possibly warrant a review by the United States Supreme Court. To the contrary, the Michigan Supreme Court simply interpreted Michigan court rules that the court itself had adopted in affirming two lower Michigan courts that had issued sanctions against an attorney (Garratt) that made both false and frivolous filings in a Michigan court. *See* Staff Comment to MCR 1.100 ("After the submission of the committee report, the Supreme Court again considered the rules and adopted them in the present form"). Appendix "C".

Garratt apparently believes that he should "escape" mandatory sanctions under both a Michigan Court Rule and a distinct and specific statutory provision because false affidavits and false and frivolous motions he filed should not technically be considered "pleadings" under the Michigan Court Rules.

However, in affirming sanctions against Garratt, the Michigan Supreme Court resolved a conflict that existed in the Michigan Court of Appeals, and aptly held that, "... sanctions can be imposed against a lawyer who files an improperly signed paper, even if it is not a pleading." Petitioner's Appendix A-2, A-2.4. Succinctly stated, there is no constitutional issue present here.

Also of note is that the Michigan Supreme Court is a discretionary court. That court need not review a case, or every issue in a case. *See* MCR 7.301. Appendix "C". Therefore, Garratt's complaint that the Michigan Supreme Court did not revisit all issues decided by the Michigan Court of Appeals is specious. The court,

upon a review of the record, determined that the only issue that warranted attention was whether the false filings by Garratt warranted imposition of mandatory sanctions per the provisions of MCR 2.114. Obviously, the Michigan Supreme Court would not have reached this issue, unless the record and decisions of the lower courts established the basis for application of the mandatory sanctions rule that the court itself had adopted/issued.

And, contrary to suggestions of Garratt as to a sparse record, Garratt was sanctioned only after a hearing of nearly four hours, during which he was granted ample argument on every point of law and fact. The record that was actually developed, as reflected by more than 140 pages of transcript, overwhelmingly demonstrated the propriety of sanctions.

Thereafter, two exhaustive briefs, totalling nearly 100 pages, were filed in the Michigan Court of Appeals that painstakingly detailed the false documents, including motions and affidavits, that had been submitted by Garratt to the trial court. Consequently, for Garratt to feign ignorance of what caused him to be sanctioned is simply the acts of a blatherskite, desperate to avoid the consequences of his misdeeds.

COUNTERSTATEMENT OF THE CASE

Garratt makes the following claim in his remarks to this Court:

> That is, Petitioner was not sanctioned for signing frivolous pleadings or for filing frivolous motions or affidavits. Rather, Petitioner was sanctioned for representing Plaintiff at her deposition and for signing truthful, yet still unidentified, motions and affidavits in support of pleadings signed by Plaintiff.

Petition for Writ of Certiorari, p. 5.

This assertion, as are others in the petition, is blatantly false.

In fact, all one needs to do is look at the language of the sanctions order included in Appendix C-1 at C-1.2 of Petition for Writ of Certiorari. The trial court expressly noted, contrary to Garratt's claim, as follows:

> ... Plaintiff and her counsel, C. William Garratt, having signed pleadings that this Court has determined contain false and scandalous allegations, stated for the improper purpose of harassment and vexation; this Court having also found that pleadings signed by the Plaintiff and her counsel Garratt were not well founded in fact and/or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law;
>
> IT IS HEREBY ORDERED that based upon the violations by Plaintiff and her counsel, Garratt, of MCR 2.114, and also pursuant to MCR 2.625, sanctions are awarded against both Plaintiff and her counsel, jointly and severally, ...

In fact, on or about December 18, 1989, Garratt procured an affidavit from attorney Eric J. McCann.[1] Appendix "B-1". (Petitioner

[1]Given the obvious lack of any federal issues, and the concrete Michigan authority (*i.e.*, both court rule and statute) underpinning the decisions of the Michigan courts, Respondents will not waste time detailing each of Petitioner's false filings and statements. Respondents have provided examples sufficient to demonstrate that false filings were made, should the Court even reach this issue.

was, at the time, representing Mr. McCann in a fee dispute with a former client.) The affidavit was notarized by Garratt's then personal secretary, Alicia McCully.

The McCann affidavit questioned whether Plaintiff, Elizabeth Bechtold ("Bechtold"), had been mentally competent at the time she signed a property settlement agreement and authorized entry of a judgment in the underlying divorce action. The obvious goal of that affidavit was to convince the trial court that issues of fact may exist with respect to Bechtold's competency, and thereby avoid dismissal, as a matter of law, of claims which sought, in part, to set aside terms of a divorce judgment and property settlement (which included express releases executed more than 2½ years earlier).

McCann professed to have detailed knowledge as to the Bechtold representation; and alleged that he and another attorney had actually performed the work in the Bechtold divorce case. McCann also opined that Bechtold was not competent when signing the divorce decree; and that her signature was the product of a "weakened mental condition". In addition, McCann alleged that he had engaged in numerous discussions with Bechtold, and that "we" (*i.e.*, he and another attorney in his firm) had actually recommended that Bechtold not agree to the property settlement.

McCann's precise words are extremely significant, and we set forth a portion of his affidavit as follows:

2. My former law firm ... represented Ms. Bechtold for a one month period beginning on or about March 17, 1989 in a divorce action filed against her by Eddie Morris. The work was done by myself and Mark Hafeli.

3. During our representation of Ms. Bechtold, it was abundantly clear that she was suffering from severe emotional distress caused by her relationship with her then husband, Eddie Morris.

* * *

5. During the course of that representation, Ms. Bechtold insisted that my firm not compel answers to interrogatories or seek

any other discovery from Eddie Morris or the Garratt law firms. She expressed fear that her employment would be terminated, leaving her with no means of support if such were pursued.

6. Although we believed the settlement proposed by Eddie Morris was not fair or reasonable to Ms. Bechtold and we recommended to her that she not accept that ore any similar settlement, she insisted on accepting the settlement because she could not mentally or physically put up with the ordeal (not an ordinary divorce) to which Eddie Morris was subjecting her.

* * *

8. In my opinion, due to Ms. Bechtold's emotional trauma induced by Eddie Morris, Ms. Bechtold was incapable of conducting an attorney/client relationship, incapable of accepting her attorney's advice, and incapable of any knowing understanding of her rights.

9. Ms. Bechtold was so mentally brow beaten by her husband/employer Eddie Morris that she could not act competently in our representation of her.

* * *

11. In my opinion, Ms. Bechtold's execution of the 'Property Settlement' and submission to the Judgment of Divorce was the direct product of weakened mental condition.

Appendix "B-1" (emphasis added).

The problem with Mr. McCann's affidavit was that it was false, and both Petitioner Garratt and McCann knew it was false.

In fact, in the case of *Garratt* v *Pauley*, Oakland County Circuit Court, civil action No. 88-361909-CZ, McCann had signed a pleading that stated that he had "never" represented Plaintiff. Appendix "B". And, in the *Pauley* case, Petitioner Garratt was actually counsel of record, so he obviously knew of the prior McCann filing. Ironically, in the Oakland County case, Petitioner Garratt and McCann had been opposing counsel (Garratt was suing

Mr. Pauley, a former client, for legal fees), and Garratt filed a motion to disqualify McCann in the *Pauley* case alleging that during McCann's purported representation of Plaintiff Bechtold, a paralegal in Garratt's law firm, McCann supposedly acquired confidential and secret information as to the Garratt law firm. McCann's response to Garratt's motion in the Oakland County action, months before Garratt induced McCann to sign an affidavit in the case at bar, had been as follows:

> Eric J. McCann never represented C. William Garratt, and never represented Elizabeth Bechtold. Although Elizabeth Bechtold did consult with Eric J. McCann, he declined to represent her and referred her to Mark Hafeli, a lawyer in Eric J. McCann's former firm of Beier, Howlett. That representation, however, ended some time ago.

See Appendix "B-4" (emphasis added).

The above words of McCann were obviously in direct conflict with those contained in the December 14, 1989 affidavit that Garratt submitted to the trial court in the case at bar. Indeed, in his April, 1989 pleading to the Oakland County Circuit Court, McCann claimed to have "never" represented Bechtold. Yet, in the affidavit submitted by Garratt to the trial court, McCann claimed not only that he had represented Bechtold, but that he had given her extensive legal advice and was even competent to state her mental condition at the time she entered into the property settlement.

The falsity of the McCann affidavit was brought to the trial court's attention. The court commented:

> [The Court]: We need consistency in what Mr. McCann says, where he says he represented her as — on this affidavit that you [Garratt] filed in this case, and there's a pleading, apparently, filed by him in which he says he never represented her.
>
> * * *
>
> [The Court]: It's an inconsistency.

Appendix "A-4, A-4.3".

Garratt then weakly attempted to explain what McCann must have "intended to convey" by his Oakland County pleading. The court promptly rejected Garratt's absurd explanation and ruse:

> [The Court]: Well, I'm not going to go into that. He says he never represented her, so we'll take his word. Now, I'd rather he explained it and you tell me what you think and [sic] [than] you tell me what you think he meant, because your evidence what you think he meant is objectionable. I never let anybody read someone else's mind.

Appendix "A-4, A-4.3 - 4.4".

To this day, Garratt has never explained away the procuring and filing of the false McCann affidavit.

In addition to the false McCann affidavit that Garratt procured and filed, Garratt also actually signed a number of pleadings in the lower court, including his own affidavit, which was false. Therefore, Garratt's assertions that he did not actually sign any false or frivolous pleadings is itself a falsity.

Some brief background is necessary.

As noted above, the underlying action involved an attempt by Bechtold to overturn a divorce decree that had been final for well more than one year. Petitioner Garratt had been present when Bechtold testified at a deposition to the fact that she had known that her twin sister had collected sums from Respondent Eddie Morris that were alleged expenses owed for the operation of a gift shop in northern Michigan. Appendix "B". Per a divorce decree, Respondent Eddie Morris was to pay 25% of such expenses and be entitled to 25% of any profits/revenues. Despite such testimony at her deposition, Bechtold had signed an affidavit that was filed on or about December 14, 1989. In that affidavit, Bechtold falsely contended that she had no prior or concurrent knowledge of her twin sister writing letters demanding Respondent Eddie Morris to pay the expenses (which were paid). *See* Appendix "B". That affidavit

was obviously false, given her own deposition testimony.

Garratt, however, despite being present at Bechtold's deposition, filed his own false affidavit that stated, in part:

> To whatever extent that Defendant Eddie Morris' affidavits and pleadings state facts that are expressly contradictory to those [including Bechtold's] affidavits, his statements are, to the best of my knowledge, information and belief, false.

Appendix "B".

Obviously, Garratt's own affidavit, which endorsed Plaintiff's false affidavit, was itself false.

But, there is even more. Garratt's affidavit also contended that Respondent Eddie Morris had used a check, paid to him by the Garratt law firm, in the amount of $12,650.00 on February 12, 1987, to "indirectly" close a purchase of a residential lot in Clarkston, Michigan, on February 13, 1987. Appendix "B".

This statement by Garratt was also proven to be knowingly and deliberately false. In fact, on February 13, 1987, the day after the check from the Garratt law firm for $12,650.00, Respondent Eddie Morris had actually written a check back to the Garratt law firm for $10,000.00. Appendix "B".

Garratt went even further when he signed a pleading dated December 7, 1989 in the lower court, which stated:

> Plaintiff contends that the $12,500 check, a marital asset owed by the law firm to Defendant during 1986 (before the divorce) was secured on February 12, 1987 so that $10,000 of that money could be used as the downpayment on that lot.

Appendix "B".

The signatory on the foregoing pleading was Petitioner, C. William Garratt. Appendix "B". However, Garratt knew that such allegations were patently false because Garratt's law firm cashed the $10,000.00 check from Respondent Eddie Morris dated

February 13, 1987. There was no way, then, for Respondent Eddie Morris to have used $10,000.00 of the $12,650.00 check towards a downpayment on any lot, because he had immediately tendered $10,000.00 back to the law firm.

Respondents filed a pleading detailing the falsity of such allegations, and actually attached a copy of the Morris $10,000.00 check which had been cashed by the Garratt law firm. Respondents also filed unrebutted affidavits of Respondents Edsel Morris and Donna Piotrowski, which demonstrated that Respondent Eddie Morris had no money in the lot. *See* Appendix "B". Yet, Garratt went ahead and filed his own affidavit that repeated such false allegations.

Garratt also falsely accused Respondent Eddie Morris of violating an injunctive order. In that instance, once again, Garratt's affidavit affirmed Bechtold's false claim in this regard that Respondent Eddie Morris had violated a divorce injunction by cashing the $10,000.00 check. The truth was that the injunctive order referred to in Plaintiff's pleadings had actually been entered in the divorce action on February 18, 1987, five days after the Morris check of February 13, 1987. Moreover, that injunction had actually been served on Garratt.

As the Court can see, Garratt's claim that his role was limited in terms of representation is also blatantly false. Garratt contends in his *certiorari* petition as follows:

> Petitioner thereafter undertook Plaintiff's representation for the limited purpose of aiding Plaintiff in obtaining discovery from Respondents, attending Plaintiff's deposition taken by Respondents, and attempting to defend Plaintiff against Respondents' voluminous motion papers.
>
> Petitioner's representation of Plaintiff lasted less than one month. That is, Petitioner's representation of Plaintiff terminated prior to the December 18, 1989 hearing on Respondents' dispositive motion for summary disposition and for sanctions. Plaintiff's new counsel appeared at that hearing.

See Petition of Writ for Certiorari, p. 4 (emphasis added).

Here, Garratt has blatantly misrepresented the facts. Indeed, Garratt extensively argued on Bechtold's behalf at the December 18, 1989 hearing. *See* Appendix "A-4, A-4.5 - 4.18", *e.g.*, 12/18/89 transcript at 87-109.

For example, Garratt frivolously argued (and signed false pleadings in support of the claim, *e.g.*, his affidavit) that Bechtold had an "oral" option to purchase a condominium that was owned by Respondent Edsel Morris. Despite the fact that the statute of frauds barred any such claim, Garratt at first argued that Bechtold did have an option, and then scrambled to change his argument when confronted by the court:

> Garratt: She exercised that right by giving him notice of the exercise of the option because it's a condo she can afford, not a more expensive one. What happened? Papa, Edsel Morris, won't sell the house, won't sell her back the condo.
>
> Morris: Your honor, there's no testimony to this. The man is making an argument that's incredible.
>
> Garratt: There's no testimony to the contrary.
>
> Morris: She testified she never talked to Edsel Morris.
>
> Garratt: The question is whether there are triable issues of fact. There's no testimony to the contrary.
>
> Morris: Oh, gees.
>
> Court: That's in the property settlement, right?
>
> Garratt: In the —
>
> Court: Which says that Edsel Morris was to sell it back to her and he wasn't a party to the agreement, was he?
>
> Garratt: Wasn't. Not — didn't sign it.
>
> Court: Well, OK then she didn't — she knew she didn't have an option then?

Garratt: No, she thought she did.

Court: Wait a minute.

Garratt: She was led by her ex-husband to believe —

Court: But she had a lawyer, though, she had a lawyer who looked at this property settlement agreement. And how can a property settlement agreement between you and me, bind McConnell?

Garratt: Well, she believed the representation of her husband at the time to be truthful.

Court: Well, I understand. But, OK, go ahead. That's why people have lawyers, so that when they sign something, they know what they're getting and what they're giving.

Garratt: That was — and I —

Court: But you see you told me that she had an option. She didn't have an option and you're a lawyer, and you know she didn't have an option.

Garratt: I wasn't her lawyer at the time, I was her —

Court: You're her lawyer now.

Garratt: She — I would readily concede that she did not have an option signed by Esdel Morris.

Court: But you just told me she did [*i.e.*, Garratt had just made a false statement, and presented a frivolous argument to the Court].

Garratt: Well, she had a right —

Court: No, you just told me she did have an option. You didn't say she thought she did, you said she did. Subsequently on my questioning, you, you say well, she thought she did.

Garratt: Your Honor —

Court: But you told me she did have an option and all the pleadings that I read, no where did she have an option.

Appendix "A-4, A-4.9-4.10" (emphasis added).

Here, Petitioner, a lawyer, was arguing for an oral option as to a piece of property. Moreover, Garratt signed an affidavit in support of such allegations, and continued to assert the argument, even after it was obvious that it was frivolous.

The Michigan Court of Appeals actually reversed a lower court that had refused to grant sanctions against a party that had made a (frivolous) claim to property based on an alleged oral agreement that was subject to the statute of frauds. *Dewald* v *Isola*, 180 Mich App 129; 446 NW2d 620 (1989).

Also of note is that MCLA 600.2591; MSA 27A.2591 does not require the signing of a pleading for a court to impose sanctions against an attorney or a party. That statute mandates sanctions against an attorney if the court finds a civil action was frivolous, which is precisely what the lower court concluded, which was firmly supported by the record. In fact, the lower court not only dismissed the case as frivolous and without merit, it also specifically found allegations "vexatious" and "spiteful". Appendix "A-4, A-4.34". Therefore, the action fell within all three subsections of the statute defining frivolous.

> (1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the non-prevailing party and their attorney.
>
> (2) The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.
>
> (3) As used in this section:
>
> (a) "Frivolous" means that at least one of the following conditions is met:

> i. The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass or injure the prevailing party.
>
> ii. The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
>
> iii. The party's legal position was devoid of arguable legal merit.
>
> (b) "Prevailing party" means a party who wins on the entire record.

MCLA 600.2591; MSA 27A.2591

Garratt was, consequently, also appropriately sanctioned as the attorney in a frivolous suit per MCLA 600.2591; MSA 27A.2591.

In any event, as the instant Honorable Court can now easily discern, Garratt's professed limited role is utterly false, as is his claim that his own representation of Bechtold ended prior to the December 18, 1989 hearing. The truth is that Garratt signed or filed a number of false or frivolous documents, and argued extensively on Bechtold's behalf at the December 18, 1989 hearing.

Also of note is that either Garratt or one of his associate attorneys appeared at every single court hearing on Bechtold's behalf. After Garratt used the ruse of "limited" appearances to take and defend depositions, a hearing was held before the lower court on December 1, 1989. Garratt's associate (once again) appeared and argued on behalf of Bechtold, and claimed that this was yet another "limited" appearance. However, when Garratt's associate indicated that he was not knowledgeable about certain facts in the case, the lower court took issue:

> Court: Just a minute. You told me last time when you were here, you said, "I'm appearing for this motion". This motion that's up today was included in that last motion. So, you are knowledgeable about what's going on.

Penskar: I'm not knowledgeable about all the facts —

Court: Of course you are.

Penskar: — that are in here.

Court: This was included in that last motion —

Penskar: Absolutely.

Court: — with one little excerpt from the last motion, which was included there. And you said you were appearing for that motion. And I'm going to say this. I will not permit lawyers to run around here saying, I'm here just for this motion, or I'm here just to take a deposition. If you're going to take a deposition in the case, you're in the case, and I want that clearly understood. No lawyer's going to come in just to take a deposition in this case or any case of mine.

Penskar: I established that the last time you —

Court: You established it, but somebody went and took a deposition after I established that.

Penskar: Absolutely. An appearance was filed, and now you're holding —

Court: There was an appearance?

Morris: No, Your Honor, it was a limited appearance given to us at the time of the deposition.

Court: I'm not going to accept limited appearances anymore.

Morris: That's what it was.

Penskar: And, you won't accept it, so Mr. Garratt and I are in the case until we withdraw with the court's permission, that's correct, we'll abide by that.

Court: OK, you're [*i.e.*, Garratt and his law firm] in the case as attorney.

Appendix "A-2, A-2.2" (emphasis added).

Obviously, Garratt's claim in his *certiorari* petition that his representation was "limited" is false, as is the claim that Garratt's representation terminated prior to the December 18, 1989 hearing. Petition for Writ Certiorari, p. 4. Garratt knows very well that he actually argued extensively on behalf of Bechtold at the December 18, 1989 hearing, *e.g.*, as to the alleged oral option referenced above.

Based on the foregoing, Garratt's participation and role in pursuing the frivolous claims asserted by Bechtold was so obvious that there was no way for Garratt to have avoided the mandatory provisions of MCLA 600.2591; MSA 27A.2591, once the trial court found, as it did, that the causes of action being pursued were frivolous.[2] Moreover, beyond question, Garratt actually signed and filed several pleadings that contained both false and frivolous material, subjecting him to mandatory sanctions pursuant to MCR 2.114.

During the sanctions portion of the hearing, Garratt (incredibly) argued the facts, once again, and again urged the court to accept the frivolous and false pleadings that had been filed (even though the court had already made its finding of frivolity). Appendix "A-4, A-4.31". Undeterred, Garratt then sarcastically referred to opposing

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[2]Garratt also knew that Bechtold had actually stolen monies belonging to Respondent Eddie Morris. In fact, the Northern Michigan gift shop had been sold without notice to Morris, and Bechtold pocketed monies that belonged to Morris from the sale (even though Morris had previously written checks for as much as $2,000 to cover his share of expenses). The trial court rebuked Bechtold and Garratt for such conduct, and ordered the monies representing the share of Morris deposited with the Court, and then paid to Morris, plus interest from the date of sale. *See*, Appendix "B". The trial court also reached the "inescapable conclusion" that Bechtold "had a lot of help ... from some attorney" in preparing her frivolous 27 page Amended Complaint (Appendix A; 12/18/89 tr at 127). Garratt had represented that he had, in essence, no involvement with the filing of Bechtold's original Complaint (signed *in pro per*, with the Garratt law firm's address). However, both Garratt and his law firm were identified as Plaintiffs in paragraph 7 of the Bechtold Complaint, but not in the caption! Appendix "B". The trial court thus had even more evidence of Garratt's direct participation and misconduct as to the frivolous pleadings.

counsel, Kenneth McConnell, as "Judge McConnell". Appendix "A-4-4, A-4.33". Finally, Garratt terminated his argument at page 147, and the court proceeded to impose sanctions.

The lower court did not limit its sanctions to MCR 2.114. The court stated:

> As far as the sanctions are concerned for bringing this lawsuit, I'm satisfied that there was a valid release, that the Plaintiff should have known about this release, her attorney should have known about this release, and so many of the things in there are just really vexatious and spiteful and really shouldn't be the basis of bothering the court with that kind of a lawsuit when there is by any stretch of the imagination, no intentional infliction of emotional distress which rises to the level that our courts have defined it. I'm going to order that sanctions be ordered.

Appendix "A-4, A-4.34" (emphasis added).

Clearly, by such language, the court was also awarding sanctions for the pursuit of frivolous claims. *See* MCLA 600.2591; MSA 27A.2591. Moreover, the court made an explicit finding that Plaintiff's attorney, namely Garratt, should have known about a release (that Plaintiff Bechtold had given as part of her divorce settlement). The court then went even further and made an additional specific finding that allegations in the pleadings were "vexatious and spiteful".

Moreover, the court's order specifically confirmed that sanctions were also awarded under MCR 2.625. *See* Appendix "C-1" to Petition.

MCR 2.625(a)(1) makes specific reference to MCLA 600.2591; MSA 27A.2591, and states as follows:

> Frivolous Claims And Defenses. In an action filed on or after October 1, 1986, if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCLA 600.2591; MSA 27A.2591.

MCR 2.625 (emphasis added).

Thus, any review of the lower court's rulings clearly establishes that the court found that the pleadings were frivolous, and that the action had been brought for the purpose of vexation and embarrassment. Appendix "A-4, A-4.34". Moreover, a review of the pleadings and the record as developed firmly supported the court's conviction and ruling. Consequently, there was no error by the trial court or any of the Michigan appellate courts.

Only by badly distorting the actual record has Garratt been able to suggest non-involvement or a lack of due process. In reality, in summary fashion, we note as follows:

(1) Garratt did, in fact, sign many pleadings in the lower court, including his own affidavit (which was false), in support of Plaintiff's pleadings; MCR 2.114 does apply to motions and affidavits. *Hicks* v *Ottowell*, 174 Mich App 750, 755-56; 436 NW2d 453 (1989).

(2) As noted, not only was it established in the lower court that Garratt had signed and submitted a false affidavit, but he also procured and submitted another false affidavit of another attorney (McCann). Moreover, the record established that Garratt, Plaintiff's attorney, must have known this affidavit was false at the time he presented it to the court.

(3) Garratt's participation and involvement in the lower case far, far exceeded that depicted in Garratt's petition to this Court. In fact, Garratt sent his associate to the first several hearings before Garratt "stepped out from behind the curtain" and began taking depositions, signing pleadings, and arguing motions. Indeed, either Garratt or another attorney from his office appeared at every single hearing to argue on Bechtold's behalf, presenting positions found frivolous by the lower court, and thus mandating sanctions per MCR 2.625 and MCLA 600.2591; MSA 27A.2591, as ordered by the court. When the lower court rejected Garratt's ruse of "limited appearances" (Appendix "A-2, A-2.2"), Garratt then appeared

as counsel at subsequent hearings, including his arguments on Bechtold's behalf at the December 18, 1989 hearing; Garratt was, of course, appropriately sanctioned per the above court rule and statute, and per MCR 2.114, because he had signed false, frivolous and vexatious pleadings.

(4) Besides asserting false and vexatious positions, Garratt also signed his name to pleadings and an affidavit which asserted a claim to real property, namely a condominium owned by Respondent Edsel Morris, where the claim was clearly deficient and subject to a statute of frauds defense. The Michigan Court of Appeals has previously reversed the lower court's refusal to grant sanctions under such circumstances. See *Dewald* v *Isola*, 180 Mich App 129; 446 NW2d 620 (1989).

(5) Even after Plaintiff Bechtold had testified that she had no personal knowledge or evidence to support claims against Respondents Edsel Morris and Donna Piotrowski, but instead was "hoping" that discovery would turn up some evidence to support her claims (*see* Appendix "A-4, A-4.20"), Garratt continued to press and argue those claims to the court, and filed pleadings, signing his own name, in support of the frivolous claims.

Consequently, the record firmly supported the sanctions awarded against Garratt by the experienced, veteran trial judge. These sanctions were awarded only after a hearing of approximately 3½ hours during which both Garratt and his (new) "co-counsel" were given every opportunity to speak as long as they wished.[3]

In sum, the overwhelming case for sanctions was presented and fully briefed and argued to the Michigan Court of Appeals, and does not need to be duplicated here. The Michigan Court of Appeals correctly rejected those arguments in an opinion that is

---

[3]Both attorneys were permitted to argue for the single plaintiff.

well-reasoned and structured. Indeed, the disingenuous and "slight of hand" assertions by Garratt that the Michigan Court of Appeals supposedly modified the trial court's basis for awarding sanctions; or that there was any lack of due process can be summarily rejected upon a review of the trial court's order and the Michigan Court of Appeals' decision. Not only is there no reversible error, but Petitioner actually "escaped" the full brunt of sanctions that should have been awarded (approximately $33,000), and instead was just sanctioned for $11,500.

ARGUMENT

I.

THE MICHIGAN SUPREME COURT PROPERLY INTERPRETED ITS OWN COURT RULE, MCR 2.114, AS WARRANTING SANCTIONS AGAINST AN ATTORNEY THAT FILES ANY FALSE DOCUMENT, INCLUDING ANY MOTION OR AFFIDAVIT, WITH A MICHIGAN COURT.

Garratt's argument, boiled down to its basics, is that even if he did procure and file false documents with a Michigan court, including false affidavits, he should not have been subject to the mandatory sanction provisions of MCR 2.114.

The Michigan Supreme Court has obviously disagreed with Garratt. Referring to MCR 2.113, the Court noted that the Michigan Court Rules, including those as to signing and verifying pleadings, do apply to "all motions, affidavits and other papers provided for by these rule." Michigan Supreme Court Op. at 5. Thus, the Michigan Supreme Court held that sanctions may be imposed against an attorney who files an improperly signed paper, even if it was not a pleading. Id.

In fact, the Michigan Court of Appeals had previously held, in February, 1989, before Petitioner's misdeeds in the case at bar, that MCR 2.114 did apply to motions and affidavits. *Hicks* v *Ottowell*, 174 Mich App 750, 755-756; 436 NW2d 453 (1989).

Consequently, and in any event, Garratt's argument that he was denied "due process" or lacked "notice" that he could be sanctioned for the filing of a false motion or affidavit is pure nonsense.

Moreover, upon analysis, the argument makes absolutely no sense. Should an attorney who files a false document with any court, for the purpose of that court relying on the material contained in the document, later be heard to argue that the filing did not

technically constitute a "pleading" subject to sanctions?

The harm that follows from a false document or a false pleading that is filed for purposes of reliance by a court is the same. Moreover, the wrong being perpetrated by the attorney is the same. In each instance, the attorney is trying to commit a fraud upon the court.

There really was no other logical way for the Michigan Supreme Court to react when asked whether the court rule that the Michigan Supreme Court had actually promulgated would prevent the filing of any false documents, even motions or affidavits (which most persons would consider pleadings) with a Michigan court.

In addition, the Michigan Supreme Court should be left to interpret its own rules, especially with regard to attorney misconduct that occurs in courts in the State of Michigan.

Finally, the sanctions were awardable both under MCR 2.114 and MCLA 600.2591; MSA 27A.2591, the latter provision not requiring any signed pleading.

II.

PETITIONER GARRATT, AN ATTORNEY, WAS NOT DENIED DUE PROCESS AFTER A FINDING WAS MADE THAT HE HAD FILED FALSE AND FRIVOLOUS PLEADINGS FOR THE IMPROPER PURPOSE OF HARASSMENT AND VEXATION.

Garratt has previously conceded, in his application to the Michigan Supreme Court, that due process did not require a full blown trial proceeding; Garratt has argued that due process mandated "a hearing to the extent that a party has a chance to know and respond to the evidence."

However, Garratt's entire claim that he had no opportunity to respond to the request for sanctions was and is specious. Both

Garratt and attorney Mark Kriger were given an opportunity to present lengthy arguments to the trial court at the 3½ hour hearing on December 18, 1989 (Appendix "A-4, A-4.5 - 4.18"). And, Garratt was afforded full opportunity to respond to the request for sanctions in any way he saw fit.

After substantial argument,[4] the transcript reveals that Petitioner left it up to the court to decide whether he could argue further on the amount of sanctions, where he said:

---

[4]By this point, the lower court had already held Plaintiff's claims were frivolous, so sanctions were mandatory. MCR 2.114. Yet, Garratt actually encouraged sanctions by two absurd statements in which he lost any possible remaining credibility. First, Garratt tried to mislead the court by asserting that sanctions under MCR 2.114 were discretionary. The lower court "called" Garratt on this point, who then had to "back pedal" and admit his misstatement:

> MR. GARRETT [sic] [GARRATT]: ...The court rule says that sanctions may be imposed, it's purely discretionary, under circumstances where in terms of legal sense, it's not based upon existing law or a reasonable argument for the extension, modification or reversal of existing law. As to facts, the question is whether or not there was a reasonable factual investigation.
>
> THE COURT: Let me just correct you on the one thing. You said the Statute is discretionary. I'm sorry, you said the rule is discretionary. It's not.
>
> MR. GARRETT: I'm sorry, I stand corrected.
>
> THE COURT: The rule says this, if a pleading is signed in violation of this rule, the Court on motion of a party or its own initiative shall impose on the person who signed it.
>
> MR. GARRETT: I'm sorry, I'm sorry —
>
> THE COURT: No, it's mandatory — I knew it was mandatory, that's what I looked at.
>
> MR. GARRETT: You're right, and the distinction I should have made is that the standard for imposition are different between the statute and the court rule and the amounts to be imposed are different under the statute and the court rule. The statute talks about how you compute the amount, the court rules do not.

Appendix "A-4, A-4.29 - 4.30" (emphasis added).

Second, Garratt actually had the audacity to again rely on the McCann affidavit when arguing sanctions! Appendix "A-4, A-4.31".

> Until I know whether or not the court intends to impose sanctions on me or Ms. Bechtold, it seems to me it would be wasting your time for me to argue further, since I don't know in what direction you're headed, if you want — if you think it's necessary that I argue the question of the amount of sanctions, I will, but I don't — there's no point in my wasting your time if you're not going to grant sanctions.

Appendix "A-4, A-4.33".

In the ensuing ruling awarding sanctions of $11,500, on the request for $33,000 worth of lawyer time defending the action, Garratt made no further effort to argue the matter of the amount of sanctions. Appendix "A-4, A-4.34". Apparently, Garratt saw no need to argue the amount where the award was one-third of the amount requested. Garratt may very well have (finally) concluded it was best to keep his mouth shut for once.

As to the amount of sanctions, Garratt claimed that Respondents' attorneys failed to demonstrate that their request for attorneys' fees was "reasonable". The Michigan Court of Appeals correctly ruled on this issue:

> Garratt also contends that the trial court erred in imposing $11,500 in sanctions because Kenneth McConnell, Eddie Morris and Kenneth Morris, attorneys for defendants, failed to prove that the hours they expended were reasonably necessary. We disagree.
>
> In imposing sanctions under MCR 2.114, the trial court may require a party to pay the opposing party's reasonable expenses and attorney fees incurred. MCR 2.114(E); Morris, *supra*, 281. McConnell submitted an affidavit stating that he spent fifty hours on the instant case. Eddie Morris submitted an affidavit indicating that he spent 141.6 hours on the instant case. A total of 213.60 hours were therefore spent on the instant case by these attorneys. Garratt himself, however, for the purpose of supporting his argument that he adequately researched the merits of plaintiff's complaints, submitted an

> affidavit stating that he spent more than 250 hours from November, 1989 to December, 1989 on the instant case.
>
> We find that in light of the fact that Garratt spent more than 250 hours on the instant case, the 213.6 hours spent by McConnell, Eddie Morris and Kenneth Morris were not unreasonable.

It can be seen from the quoted summary that the award of $11,500 on 213.6 hours means the trial court awarded $53.84 per hour for the hours expended by Respondents' attorneys. That award cannot be regarded as excessive, unreasonable or a denial of due process when the verified hours were for attorneys whose billing rates were $250.00 per hour (McConnell) or $150.00 per hour (Ed Morris and Ken Morris). (Affidavits were submitted to support the award. *See* Appendix "B").

In sum, Garratt's claims of a denial of due process are full of hyperbole, as are all of Garratt's claims here; and when subject to examination, are found to be much ado about nothing.

Next, Garratt is plainly wrong in asserting that the Michigan Court of Appeals erred by affirming on a ground not assigned by the trial court; and is plainly wrong in suggesting that sanctions can only be assessed against an attorney who signs a complaint.

The legal principle Petitioner alludes to — an issue is not properly preserved for appeal if it is not raised before, and not addressed by the trial court — is not involved in this case at all. That rule governs the conduct of a party who seeks review on appeal of an issue which that party did not raise in the trial court. *See, Joy Management Company* v *City of Detroit*, 183 Mich 334, 341; 455 NW2d 55 (1990).

What Garratt really claims is that the Michigan Court of Appeals erred in basing its affirmance on a ground not assigned by the trial court (Petition for Writ of Certiorari, pp 7-8). There are two fundamental rules which mandate the rejection of Garratt's argument. First, it is a familiar, often used principle of Michigan jurisprudence

that correct conclusions of a trial court can be affirmed for different reasons than those assigned by the trial court. *Langschwager* v *Pinney*, 351 Mich 473, 483; 88 NW2d 276 (1958); *Loving* v *Howard Lare, Inc.*, 344 Mich 97, 102; 73 NW2d 290 (1955). It is equally clear that a trial court will be affirmed if it reaches the correct result for the wrong reason. *Peninsular Construction Company* v *Murray*, 365 Mich 694, 699; 114 NW2d 202 (1962); *Reisman* v *Regents of Wayne State University*, 188 Mich App 526, 530; 470 NW2d 678 (1991).

Second, Garratt's argument that the trial court's oral pronouncements vary from the reasons cited by the Michigan Court of Appeals misses the mark entirely. That is because of the fundamental rule that a court speaks only through its judgment or decree. The rule was stated by the Michigan Supreme Court in *Tiedman* v *Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977), as follows:

> The rule is well established that courts speak through their judgments and decrees, not their oral statements or written opinions.

In *Tiedman*, the court observed that Michigan's rule was in accord with other jurisdictions, stating (400 Mich 577, fn 4):

> 'His mere oral announcement of the decision and the grounds upon which it is based is not controlling. The whole matter is completely under his control, and is subject to be altered, changed, or even disregarded, until the written decree is approved and filed for record.' *Richmond* v *Richmond*, 326 Ill App 234, 239; 61 NE2d 573, 575 (1945); State, ex rel *Tufton* v *Superior Court*, 46 Wash 395, 398-399; 90 P 258 (1907); 24 Am Jur 2d, Divorce & Separation, Sec. 422. See, also, *Young* v *Young*, 165 Mo 624; 65 SW 1016 (1901).

We have shown that Garratt unquestionably signed motions and affidavits in this case; and knowingly submitted a false affidavit of another attorney. The Michigan Court of Appeals was entirely correct in concluding that an award of sanctions was appropriate to remedy Garratt's actions in this case.

Consequently, all of Garratt's appellate pleadings, including his *certiorari* petition to this Court, are founded either upon duplicity or upon "wishful thinking", rather than any solid legal arguments.

III.

THE MICHIGAN COURT OF APPEALS HAD NO OBLIGATION TO DECIDE PETITIONER'S "ALTERNATIVE" ARGUMENTS.

Garratt also argues that the Michigan appellate courts had a duty to address each of his "alternative" arguments. In fact, most of the issues raised by Garratt were directly answered by the Michigan Court of Appeals. However, and in any event, it is clear that appellate courts have no duty to discuss or rule on every claim made by counsel. This principle was stated by the Michigan Supreme Court in *Detroit National Bank* v *Blodgett*, 115 Mich 160; 73 NW 120 (1897). In denying a rehearing in that case, the Michigan Supreme Court provided this appraisal of its duty to pass on each issue raised by counsel (115 Mich 174):

> It has never been the practice of this court to discuss every claim made by counsel in briefs, and, indeed, space in the published reports would not admit of that course. But it is intended to discuss every question which may turn the scale one way or the other, or where it may be thought to be of interest to the profession.

A further expression of this principle is found in *Pichler* v *DeHate*, 125 Mich 247, 247-248; 84 NW 138 (1900), as follows:

> Thirty-four assignments of error are relied on, of which 28 relate to the rulings of the court in admitting or rejecting testimony. We find no error in the rulings. A statement of the points raised, and a discussion of them, would be of no benefit to the profession in the trial of future cases. We therefore refrain from discussing them.

Garratt cites no authority for its argument that the Michigan Court of Appeals must decide whatever claim Garratt raises. Of course, there is no authority for that proposition; and the cited cases establish the error of Garratt's position.

IV.

SHOULD PETITIONER GARRATT BE SANCTIONED FOR MAKING FALSE STATEMENTS IN HIS CERTIORARI PETITION TO THIS COURT?

There are so many false statements in Petitioner's *certiorari* petition that only some of the most glaring shall be briefly examined.

For example, Garratt maintains:

> ... Petitioner was not sanctioned for signing frivolous pleadings or for filing frivolous motions or affidavits. Rather, Petitioner was sanctioned for representing Plaintiff at her deposition and for signing truthful, yet still unidentified, motions and affidavits in support of pleadings signed by Plaintiff.

Petition for Writ of Certiorari, p 5.

Yet, the exact language used by the trial court, at C-1.1 of the Appendix attached to Petitioner's Writ of Certiorari, establishes the falsity of Petitioner's claim:

> ... Plaintiff and her counsel, C. William Garratt, having signed pleadings that this court has determined contain false and scandalous allegations, stated for the improper purpose of harassment and vexation; this court also having found that pleadings signed by Plaintiff and her counsel Garratt were not well founded in fact and/or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law;

Consequently, Garratt's statements to this Court were blatantly false. Moreover, Garratt's inference that the false motions and affidavits he filed with the lower court were "unidentified" is also false. As seen above, the trial court even commented on the falsity of the McCann affidavit that had been procured and filed by Garratt; and further commented that many of the allegations contained in pleadings that had been filed in the case, which were both argued by Garratt and then supported by his signed affidavit, were frivolous and scandalous. For Garratt to claim that he has no idea why he was sanctioned is utterly absurd and outrageous based on the record.

Yet another example of Garratt's duplicity to this Court is his claim that he only represented Plaintiff for the "limited purpose of aiding Plaintiff in obtaining discovery from Respondents, ... and attempting to defend Plaintiff against Respondents' voluminous motion papers." As seen above, the ruse of "limited appearances" was flatly rejected by the trial court in early December, 1989. At that point, the trial court demanded that the attorneys from Garratt's law firm arguing on Bechtold's behalf enter an appearance; and Garratt's associate, Mr. Penskar, explicitly stated that the law firm's appearance, including that of Garratt, was established. Consequently, Garratt has, once again, lied to this Court and misrepresented the lower court record.

Moreover, there is no way to reconcile Garratt's allegation that his role was limited, or that his representation of Bechtold ceased prior to the December 18, 1989 hearing, with the record and the truth. The December 18, 1989 transcript actually shows that Garratt extensively argued both the law and facts on Bechtold's behalf, contrary to Garratt's misstatements to this Court. Appendix "A-4, A-4.5 - 4.18".

Next, Garratt argues that the Respondents supposedly "changed their tack" by arguing in the Michigan Court of Appeals that sanctions should be held because Petitioner signed non-pleadings, even though those pleadings were "truthful". Petition for Writ of Certiorari at 5. However, there is no cite for this absurd statement,

and, in fact, Respondents never argued that Garratt was sanctioned for filing "truthful" pleadings or documents; instead, Respondents painstakingly demonstrated the false documents that had been filed by Garratt, including the McCann affidavit; Garratt's own affidavit; and motions or responsive pleadings that had been filed by Garratt. Once again, Garratt has lied to this Court.

Next, Garratt maintains that he "never signed any pleadings in this matter." Petition for Writ of Certiorari at 4. That argument has been shown above as utterly false, given the fact that Petitioner did sign motions and an affidavit; and such documents have been held to be pleadings under Michigan law. See *Hicks* v *Ottowell*, *supra*.

There are a host of other false statements and inferences in Petitioner's certiorari petition that can be discovered upon a more complete examination of the record. Query, then, whether this Court should sanction Garratt for making false statements in a pleading to this Court? This Court could very well use the instant *certiorari* petition as a means of communicating that it will not tolerate such duplicity.

CONCLUSION

There are no valid constitutional arguments or considerations presented in the Petition for Writ of Certiorari. Therefore, that petition should be denied. In addition, this Court should consider sanctions against Garratt due to the demonstrably false statements in the petition.

RELIEF REQUESTED

Respondents request that the Petition for Writ of Certiorari be denied, and that this Court award sanctions, including attorneys' fees, against Garratt due to the false statements in the petition.

Respectfully submitted,

MORRIS & DOHERTY, P.C.

By:_____
E. MICHAEL MORRIS (SBN P31547)
Respondent, *in pro per*
300 Park Street, Suite 485
Birmingham, MI 48009-3482
(810) 642-0300

MORRIS & MORRIS, P.C.

By:_____
KENNETH J. MORRIS (SBN P17983)
Attorney for Respondents Edsel Morris and Donna Piotrowski
27840 Plymouth Road
Livonia, MI 48150
(810) 425-9055

Dated: March 7, 1994

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Appendix A-1
A-1.1
Complaint, 11/16/89

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff,

-vs.-

EDDIE M. MORRIS
Defendant.

89-909989 CZ 4/20/89
JDG: CHARLES KAUFMAN
BECHTOLD ELIZABETH A
vs.
MORRIS EDDIE M

ELIZABETH A. BECHTOLD
Plaintiff, In Pro Per
300 East Long Lake Road
Suite 375
Bloomfield Hills, Michigan 48013
645-1450

COMPLAINT

Plaintiff states as and for her Complaint against Defendant Eddie M. Morris, as follows:

Common Allegations

1. Plaintiff Elizabeth Bechtold is a resident of Oakland County, Michigan.

2. Defendant Eddie M. Morris, who is and since 1980 has been an attorney practicing law in the State of Michigan, is a resident of Wayne County, Michigan.

3. The amount in controversy in this action exceeds $10,000 and is otherwise within the jurisdiction of this Court.

4. In or about July, 1981 Plaintiff and Defendant commenced employment with C. William Garratt, P.C., also known as C.

5. In August of 1981 Defendant fraudulently induced Plaintiff to marry him by, among other things, misrepresenting that he had no physical disabilities or other problems that could interfere with the parties' plans to have children.

6. In or about October, 1984, C. William Garratt & Associates, P.C. ceased, whether entirely or for the most part, the active practice of law; at that time, Plaintiff and Defendant and certain other former employees of C. William Garratt & Associates, P.C. commenced employment with Garratt & Morris, P.C.

7. The policies and terms of employment at Plaintiff Garratt & Morris, P.C., which Defendant Morris accepted and to which he agreed, included, inter alia:

> (a) a prohibition against any intimate relationship between any lawyer employed by the law firm and any unrelated person employed by the law firm, excluding only the husband/wife relationship, so long as it might continue to exist, that existed between Plaintiff and Defendant.
>
> (b) a prohibition against any lawyer employed by the law firm seeking, having or appearing to have or seek, an intimate relationship with, or displaying sexist attitudes toward, any unrelated person who was employed by the law firm or furnished goods or services to the law firm or its clients, whether as a court reporter, an independent contractor or otherwise;
>
> (c) a prohibition against any lawyer employed by the law firm rendering legal services to any person without the prior knowledge and consent of Plaintiff C. William Garratt with respect to, inter alia, the identity of the client, the subject matter and terms of the representation, and the consideration that would or might be received for such services.

8. In or about January, 1987, Garratt & Morris, P.C., ceased, whether entirely or for the most part, the active

* * *

C. granting Plaintiff independent equitable relief as requested above and whatever other equitable relief to which Plaintiff may be found to be entitled; and

D. awarding Plaintiff whatever other relief to which this Court finds Plaintiff to be entitled.

Elizabeth Bechtold
Plaintiff, In Pro Per
300 East Long Lake Road
Suite 375
Bloomfield Hills, MI 48013
645-1450

Dated: November 16, 1989
0956b

Appendix A-2
A-2.1
Transcript, 12/1/89 Hearing
STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff

-vs.-

Civil Action No.
89-909989-CZ

EDDIE M. MORRIS, EDSEL MORRIS,
and DONNA PIOTROWSKI,
Defendants.

MOTION — VOLUME II

Before the Honorable Charles Kaufman, Circuit Judge, on Friday, December 1, 1989, at 1601 City County Building, Detroit, Michigan.

APPEARANCES:

ELIZABETH A. BECHTOLD
ALAN PENSKAR
300 E. Long Lake Road
Suite 375
Bloomfield Hills, Michigan 48013
Appearing on behalf of the Plaintiff

KENNETH G. MORRIS
2000 North Woodward Avenue
Suite 100
Bloomfield Hills, Michigan 48013
Appearing on behalf of Esdel Morris and Donna Piotrowski

EDDIE M. MORRIS
2000 N. Woodward Avenue
Suite 100
Bloomfield Hills, Michigan 48013
Appearing in Pro Per

MR. PENSKAR: Absolutely.

THE COURT: — with one little excerpt from the last motion, which was included there. And, you said, you're appearing for that motion. And, I'm going to say this. I will not permit lawyers to run around here saying, I'm here just for this motion, or I'm here just to take a deposition. If you're going to take a deposition in the case, you're in the case, and I want that clearly understood. No lawyer's going to come in just to take a deposition in this case or in any case of mine.

MR. PENSKAR: I established that the last time you —

THE COURT: You established it, but somebody went and took a deposition after I established that.

MR. PENSKAR: Absolutely. An appearance was filed, and now you're holding —

THE COURT: There was an appearance?

MR. MORRIS: No, your Honor, it was a limited appearance given to us at the time of the deposition.

THE COURT: I'm not going to accept limited appearances anymore.

MR. MORRIS: That's what it was.

MR. PENSKAR: And, you won't accept it, so Mr. Garrett and I are in the case until we withdraw with the Court's permission, that's correct, we'll abide by that —

THE COURT: Okay. You're in the case as attorney.

MR. MORRIS: And, my point is, your Honor, there's no point in holding up my money. They never got a stay of Judge Rashid's divorce decree which gave me the 25 percent interest. How can they ask me for $2,000 in January and then keep $5,000? It's crazy.

THE COURT: Ostensibly, it looks that way. I don't want to make any precipitous orders just because it does look like it. I did set this for December 18th —

MR. PENSKAR: That's correct.

THE COURT: — which is a Monday when I'll take a lot of time to try to sift out a lot of these motions. And, I did ask this; are there any other pleadings you want to be filed? The plaintiff did say, yes, she did want to file an amended complaint. I said, okay, and I did get that amended complaint, I understand. So, we're now on the amended complaint, which has been cleaned up from the original complaint.

MR. PENSKAR: That's correct.

THE COURT: Where it talks about parties being

Appendix A-2
A-2.4
Transcript, 12/1/89 Hearing

REPORTER'S CERTIFICATE

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

I, DAVID A. CUCINELLA, CSMR-3614, Certified Court Reporter acting in and for the Third Judicial Circuit, Wayne County, State of Michigan, do hereby certify that the foregoing pages 1 through 21, inclusive, was reduced to typewritten form and comprise a true rendition of the proceedings taken by means of video recordation without the benefit of a court reporter present during the proceedings in the above-entitled matter, on Friday, December 1, 1989.

I further certify that I, DAVID A. CUCINELLA, will assume no responsibility for any events that occurred during the above proceedings for any inaudible responses by any party or parties that are not discernible on the video of the proceedings.

I FURTHER CERTIFY THAT MY CERTIFICATE ANNEXED HERETO APPLIES ONLY TO THE ORIGINAL TYPEWRITTEN, SIGNED, CERTIFIED TRANSCRIPT. THE UNDERSIGNED ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OF ANY REPRODUCED COPIES NOT MADE UNDER MY CONTROL OR SUPERVISION.

/s/ David A. Cucinella
DAVID A. CUCINELLA, CSMR-3614
Certified Court Reporter

Dated: This 6th day of December, 1989.

Appendix A-3
A-3.1
Order, 12/4/89

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff

-vs.-

EDDIE M. MORRIS, EDSEL MORRIS,
and DONNA PIOTROWSKI,
Defendants.

Honorable Charles Kaufman

Civil Action No.
89-909989-CZ

Elizabeth A. Bechtold
Plaintiff, In Pro Per
300 East Long Lake Road
Suite 375
Bloomfield Hills, Michigan 48013
645-1450

Kenneth B. McConnell (P17326)
Of Counsel To Eddie M. Morris

E. Michael Morris (P31547)
In Pro Per

Kenneth J. Morris (P17983)
Attorney for Defendants
Edsel Morris and Donna Piotrowski

ORDER RE DEPOSIT OF FUNDS

At a session of said Court held in the
City County Building, Detroit, Wayne County,
Michigan on December 4, 1989

Appendix A-3
A-3.2
Order, 12/4/89

PRESENT: HONORABLE CHARLES KAUFMAN
Wayne County Circuit Judge

This matter having come on for hearing on December 1, 1989;

IT IS HEREBY ORDERED that Plaintiff be, and she hereby is, ordered to deposit with the Clerk of the Wayne County Circuit Court the sum of $5,439.07, which sum the Clerk shall deposit into an interest bearing account until further order of the Court.

/s/ Charles Kaufman
Charles Kaufman
Wayne County Circuit Judge

Approved as to form:

/s/ Elizabeth A. Bechtold
Elizabeth A. Bechtold
Plaintiff

/s/ Eddie M. Morris
Eddie M. Morris
Defendant

/s/ Kenneth McConnell / EMM w/ per
Kenneth McConnell
Attorney for Defendant
Eddie M. Morris

/s/ Kenneth Morris / EMM w/ per
Kenneth Morris
Attorney for Defendants
Edsel Morris and Donna Piotrowski
0987b

Appendix A-4
A-4.1
Transcript, 12/18/89 Hearing
STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff

-vs.-

Civil Action No.
89-909989-CZ

EDDIE M. MORRIS, EDSEL MORRIS,
and DONNA PIOTROWSKI,
Defendants.

MOTION

Before the Honorable Charles Kaufman, Circuit Judge, on Monday, December 18, 1989, at 1601 City County Building, Detroit, Michigan.

APPEARANCES:

C. WILLIAM GARRATT
MARK KRIGER
300 E. LONG LAKE ROAD
BLOOMFIELD HILLS, MICHIGAN 48013
Appearing on behalf of the Plaintiff

KEN MCCONNELL
EDDIE MORRIS
2000 N. WOODWARD AVE
SUITE 100
BLOOMFIELD HILLS, MICHIGAN 48013
Appearing on behalf of the Defendant, E. Michael Morris

KENNETH J. MORRIS
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Appearing on behalf of the Defendants, Edsel Morris and Donna Piotrowski

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Transcript, 12/18/89 Hearing

TYPED BY:

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Certified Court Reporter, CSMR-3614

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WITNESS:

None

EXHIBITS:

None

[PAGES 24-26]attorney should do when he filed that affidavit. He should also have filed a plaintiff's answer to motions, defendants to disqualify plaintiff's attorney that was filed by Eric McCann in Oakland County. In the case in which Garrett was of counsel, Eric McCann states in this pleading which Mr. Garrett had and he didn't file it with the affidavit, he said, "Eric J. McCann never represented C. William Garrett and never represented Elizabeth Bechtold." I think that — he says she did consult with him, he never represented her. Now, he's filing an affidavit and turning to the pleading filed in Oakland County which he received. This is bad faith, your Honor, on Mr. Garrett's part, and I think it calls for sanctions.

THE COURT: Look —

MR. MORRIS: To say that this man is the attorney when he received a pleading where this man was allowed to proceed because of filing the pleading saying that he never was her attorney.

THE COURT: It does vary, doesn't it?

MR. MORRIS: Yes.

MR. GARRETT: May I see the affidavit for a moment?

THE COURT: It's not an affidavit, it's —

MR. MORRIS: It's the pleading. And, if you'll note, Mr. Garrett was on the front of it. He hadn't received.

MR. GARRETT: Hold on a second. If I take a look at it for a second, I can explain it.

THE COURT: Sure.

MR. MORRIS: Your Honor, also I would —

THE COURT: We need consistency in what Mr. McCann says, where he says he represented her as — on this affidavit that you filed in this case, and there's a pleading, apparently, filed by him in which he says he never represented her.

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MR. GARRETT: Well —

THE COURT: It's an inconsistency.

MR. MORRIS: Your Honor —

MR. GARRETT: Excuse me. It's an inconsistency. This document, which has been handed to you, hasn't been verified. Mr. McCann and Mr. Hafford (ph) of my understanding represented Ms. Bechtold at all times during the course of —

THE COURT: Well, I understand —

MR. MORRIS: Your Honor, I'm going to object to this.

MR. GARRETT: — the underlying divorce case.

MR. MORRIS: He's saying that this attorney is not to trusted when he files documents.

THE COURT: Okay.

MR. MORRIS: I'm going to go ahead, your Honor, and I would just point out that as far as the questions —

MR. GARRETT: It may mean — it may be that what Mr. McCann intended to convey by that pleading was that he never represented Ms. Bechtold in Oakland Court. It's clear — even the bills that he — that she received from —

THE COURT: Well, I'm not going to go into that. He says he never represented her, so we'll take his word. Now, I'd rather he explained it and you tell me what you think he meant, because your evidence what you think he meant is objectionable. I never let anybody read someone else's mind.

MR. MORRIS: And, I feel very strongly that if hadn't attached this — this was part of the pleadings he received, his name is on the file.

THE COURT: Yeah, you've told me that.

MR. MORRIS: He should have attached this; if he didn't attach

it I believe it's bad faith and should call for sanctions. Further, the — Mr. Kriger said that

[PAGES 87-110]lot. There are issues of fact here, your Honor. The only difficult issue for you is whether or not the Count grounded in equity can survive. I don't think there is any question that the Counts grounded in damages survive this hearing. Whether or not the Count in equity survives is a more difficult decision. I believe that there's good excuse for the delay and that there has not been detrimental reliance. But I don't think on the others, it's even a close call.

MR. GARRETT: Let me add a couple of things, if I may, your Honor, to try to clarify the facts. First, and I don't intend to know everything that's been written in all of these pleadings because of the rapidity with which they've been both received and attempted to be responded to. This is not a lawsuit of grave public importance. This is not a lawsuit that involves millions of dollars. This is a lawsuit between Ms. Bechtold on the one hand and her ex-husband and his father and sister on the other hand. I dare say that in all your years on the bench, you have scarcely seen an occasion wherein a lawsuit of this apparent lack of magnitude, so many pages have been filed in such a short period of time. Now, we've heard from Eddie Morris today that in the past month he spent 140 hours on this case. Now, I want you to remember, you make whatever decisions you're gonna make, I urge you to remember that at all times from January 1 of '87 —

MR. MORRIS: I'm going to have to object, your Honor. This is not adding something, this is argument.

THE COURT: Well, that's what everything is.

MR. MORRIS: This is jury argument.

MR. GARRETT: That's the whole problem with this hearing. I agree, it is jury argument.

THE COURT: If you're going to admit that, save it for a jury, because nobody has admitted that yet. Neither Mr. Kriger, nor

either of the Morrises have said this is jury argument. If it's jury argument, I don't want to hear it. I want argument based upon whether or not there is a cause of action pled here. Whether or not looking at the light most favorable to the plaintiff, she doesn't have a cause of action or she does. That's the issue, not jury argument, this poor woman and all that kind of stuff. Or this poor man that's put through all this. I don't want to hear that. Just give me some facts based upon either admissions or based upon what's been proven. That's all I want.

MR. GARRETT: Throughout the time period of January of '87 and for that matter, years before that until August 17 of '88, he was, for all practical purposes, her employer.

MR. MORRIS: Your Honor, excuse me, he's repeating Mr. Kriger's argument. He was supposed to add things. You have two lawyers arguing for one party in the court and all he's doing now is repeating. I thought he was supposed to add. The court rule doesn't give a party a right to come into court and have two attorneys to speak on the same issues.

THE COURT: Okay. You may proceed, but try to give me things that Mr. Kriger didn't argue.

MR. GARRETT: Please keep in mind that if he could spend 140 hours a week in the last month on this case or 140 hours a month, he probably spent 280 hours a month trying to browbeat this lady as her employer and this woman in the affidavits that you have in front of you, are not from Bill Garrett only — who are they from? They are from Mark Evans, at the time Garrett and Morris & Evans. They are from Alicia McCook who throughout the period of time was a secretary of the law firm, doing principally my work. They are from her twin sister and her twin sister's husband, who for 15 years has been a Pontiac policeman. They're from Eric McCann, who's a lawyer of approximately 20 years experience, although principally Oakland County work, Mark Haffley (ph), an associate, Mr. McCann and Mr. McConnell for years, partners in the Hartman, Bar, Howell, McConnell, McCann & Kincep (ph) firm.

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I've got the names misarranged, but the point is, that there is — has been a very short period of time, a substantial showing, I think presented to this Court, in support of two things. One, the several damage Counts that are contained in the Complaint and the equity Count that's contained in the Complaint. All of the case law that he cites concerning latches requires two elements. One unreasonable delay and detrimental reliance upon the delay. Are we to believe that he would not have remarried had he known of this lawsuit? Are we to believe that he would not have purchased a new house had he known of this lawsuit? That and that alone seems to me, should put an end to this motion. Now let's talk for a moment about tender. You cannot tender what you don't have. She could not tender, your Honor, what she got under the divorce judgment in 1987, because she had invested the proceeds in a new home, that as a result of the divorce judgment, apparently the former home was sold to a third party. You can't resurrect that part of the status quo ante. And in addition we think that we've presented to you a plausible case that even if she had the present ability in '87 or '88 or '89 to tender back what she had, it would have been futile. You say, well, how can you persuade me that it wouldn't be futile. Merely the events of February 17 and 18, 1988, ten months after the divorce judgment. These are events that Mr. Kriger referred to, but with — because he's new on the case, he got them mixed up a little bit. On February 17, '88, she goes to Eddie Morris to borrow $500.00 to pay a Hudson's and a Detroit Edison bill. He owed her $1,500.00 in July, four or five months down the road under the divorce judgment. He says, oh, no problem, I don't want to loan you the money, I'll just prepay the $1,500.00. He then says, by the way, I've got a friend who owns a lot in Oakland County that I might buy. Now that's February of '88. It's important, because his deposition testimony in this case, indicates that he, "took the lot over", from his sister in June of '87. But he tells her that he has a lot in Oakland County that a good friend owns that he might be interested in buying. He then hands her a check with the endorsement on it, which unwittingly she signs. There's no indication as to who the beneficiaries are to be of the release.

THE COURT: The beneficiaries of what?

MR. GARRETT: Of the release language on the check. There's no indication as to who the beneficiaries are to be, there's no reference to Edsel Morris, no reference to Donna Piotrowski. It talks about claims related to the marriage and property settlement. What is that? I mean, I'm not going to recite the law concerning parole evidence, but your Honor is well aware that where there are ambiguities, that could be proven by parole and even when there aren't ambiguities, you can introduce evidence to show fraud. So she signs the check, she deposits it, then starts scratching her head and asks him for some more information. He refuses to talk to her. She sends her sister down then to the records — to check the records of Independence Township with a whole bunch of people who might be his friends. His — her sister, the policeman's wife, finds a lot in Deerwood, in the sister's name. The next day, February 18th, she tenders her check for $1,500.00 back to him. She can't give him his check back, because he tricked her into depositing it. She tenders her check back to him for the same amount of money, together with a note, saying, in essence, you cheated me, I rescind the deal. The word rescind isn't in there, but it doesn't need to be. We all know. What's he do? Says, in essence, go fly a kite. Now, it was clearly futile for her to retender the $1,500.00, but she did so. I suggest it was equally futile for her, or there's an issue of fact, as to whether it was equally futile for her to retender what she got out of the divorce judgment if she had a legal obligation to do so under circumstances where he had created a situation so it was impossible. She had under the divorce judgment, a right to buy back her old condo.

THE COURT: Is that in the divorce judgment? That wasn't my understanding throughout the pleadings.

MR. GARRETT: Well, I'm sorry.

THE COURT: That was an oral agreement by Edsel?

MR. GARRETT: Not at all. Not at all.

THE COURT: That's what she claims.

MR. GARRETT: Not at all.

THE COURT: That's what the pleadings say, your pleadings.

MR. GARRETT: True, your Honor, not at all. They will concede that the property settlement agreement contained an expressed right on her part to buy back her old condo. It's in black and white.

THE COURT: That's not what you said though, in your pleadings. Your pleadings said that they agreed to do it orally, and then she gave that up. That's what your pleadings say

MR. GARRET: I don't think so. But, if they do, they're wrong.

THE COURT: Okay.

MR. GARRETT: She exercises that right by giving him notice of the exercise of the option, because it's a condo she can afford, not a more expensive one. What happened? Papa, Edsel Morris, won't sell the house won't sell her back the condo.

MR. MORRIS: Your Honor, there's no testimony to this. This man is making an argument that's incredible.

MR. GARRETT: There's no testimony to the contrary.

MR. MORRIS: She testified she never talked to Edsel Morris.

MR. GARRETT: The question is whether there are triable issues of fact. There's no testimony to the contrary.

MR. MORRIS: Oh, gees.

THE COURT: That's in the property settlement, right?

MR. GARRETT: In the —

THE COURT: In which says that Edsel Morris was to sell it back to her and he wasn't a party to the agreement, was he?

MR. GARRETT: Wasn't. Not — didn't sign it.

THE COURT: Well, okay, then she didn't — she knew she didn't have an option then?

MR. GARRETT: No, she thought she did.

THE COURT: Wait a minute.

MR. GARRETT: She was led by her ex-husband to believe —

THE COURT: But she had a lawyer, though. She had a lawyer who looked at this property settlement agreement. And how can a property settlement agreement between you and me, bind McConnell?

MR. GARRETT: Well, she believed the representations of her husband at the time to be truthful.

THE COURT: Well, I understand. But, okay, go ahead. That's why people have lawyers, so that when they sign something, they know what they're getting and what they're giving.

MR. GARRETT: That was — and I —

THE COURT: But you see you told me that she had an option. She didn't have an option and you're a lawyer, and you know she didn't have an option.

MR. GARRETT: I wasn't her lawyer at the time, I was her —

THE COURT: You're her lawyer now.

MR. GARRETT: She — I would readily concede that she did not have an option signed by Edsel Morris.

THE COURT: But you just told me she did.

MR. GARRETT: Well, she had a right —

THE COURT: No, you just told me she did have an option. You didn't say she thought she did, you said she did. Subsequently on my questioning you, you say well, she thought she did.

MR. GARRETT: Your Honor —

THE COURT: But you told me she did have an option and all the pleadings that I read, nowhere did she have an option.

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MR. GARRETT: There is a written portion of the property settlement agreement signed by Eddie Morris —

THE COURT: Well, that you told me now.

MR. GARRETT: — giving her that right.

THE COURT: To get it back from Edsel?

MR. GARRETT: Yes, your Honor. Give me a copy of — if somebody can give me a copy —

THE COURT: Well, okay, if you say that, I'll believe you. But you and I know as lawyers that that does not give her an option, if Edsel Morris had title.

MR. GARRETT: Well, if somebody will show me a copy —

THE COURT: If I agree to give you an option to buy something that McConnell owns, I sure can't bind McConnell. And you should know that my agreement doesn't give you an option.

MR. GARRETT: You're not going to hear an argument from me that there might not be a defense to its enforceability under the Statute of Frauds, okay? But the bottom line is, is that the property settlement agreement, that her about to be ex-husband drafted and that she signed, okay, provided that she have a specific right to buy back this condominium. As a result of her inability to exercise that option for whatever factual or legal reason may be attributed to it, she had to buy a more expensive home, she put all her money into a more expensive home, so she was in a position where she was incapable of tendering it back.

THE COURT: Did she do anything to try to exercise that supposed option?

MR. GARRETT: Yes.

THE COURT: What did she do?

MR. GARRETT: She — she sent, as I understand it, to Edsel Morris, through Eddie Morris, a written letter exercising the option.

THE COURT: That's nowhere in the pleadings, now, is it? In all these piles of pleadings I've got here, I don't see it there.

MR. GARRETT: Well, it may not be there. I don't quarrel with the Court on that point.

THE COURT: I think you gave me everything that you could. I thought you did.

MR. GARRETT: Please keep in mind that they had from November 17th to December 11th to file their masses of papers and we had from noon or later, because some of their papers were late, noon or later on December 11th until the close of business on December 14th to come up with what we could. With regard to Eddie Morris's argument of lack of materiality, I think the *James* case, which is cited on Page 10, it's 57 Mich App 452, 1975, clearly indicates that given the economics involved in this case, the failure to disclose a $10,000.00 equity in anything, whether it's the lot or a check or anything else, the failure to disclose the $10,000.00 equity is not only material, but in that case it was held to be a fraud on the Court. Next, one of the depositions that you don't have before you is the deposition of Wendy Meyer, as it hasn't been transcribed and filed yet. Certainly there are some things in that deposition that helped the Defendant's case. But there were also some things in that deposition that help the Plaintiff's case. In that deposition, Wendy Meyer admits under oath that Katherine Strutz's (ph) affidavit, paragraphs A and B of the title paragraph two or three that she admits that approximately half of Ms. Strutz's (ph) allegations are true. You have Donna Piotrowski, the sister, who's never been on the lot, ever in her life, apparently, she refuses to submit to a deposition. You have her husband, Ralph, of many years, who like her lives in Westland, they each have their own separate businesses in Westland, they've got their kids in Westland schools, we can't get his deposition. His deposition is obstructed by them. They refuse to produce him for deposition just like Donna Piotrowski and Edsel Morris. But, what do we know? Well, Ralph's name isn't even on the deed. The property is never conveyed in terms of record title, from Donna Piotrowski to Eddie Morris with or

without Ralph's participation, even though by his own admission in his deposition, he "took the lot over", in June of '87. Now, when did he really take the lot over? We just got after 5:00 on Friday of last week, the last business day prior to this hearing, a copy of the check establishing that contrary to his expressed deposition testimony that he never paid any money to anybody concerning this lot, he wrote a $1,000.00 check to the realtor on January 30, 1987. That was before the divorce case was even filed. The closing takes place literally two weeks later. Curiously, your Honor, we don't have a purchase agreement that's dated. We don't have a January 30 purchase agreement, the Defendant notes to his apparent surprise at his deposition that he hasn't produced a purchase agreement for the lot. Says he'll give it to us, he never does. We have to try to get a copy from Durbin. Durbin furnishes a purchase agreement that's undated. February blank, '87.

THE COURT: The divorce was granted when? April '80 —

MR. GARRETT: April 29.

THE COURT: April '87?

MR. GARRETT: April 27, your Honor. So given those circumstances, I think you have to view it with the utmost suspicion any testimony, controverted or otherwise, from the Defendants as to the allegations that the Defendants conspired to defraud her with regard to marital assets. What do we have? We've got the interest in the law firm, we've got $10,000.00 equity in a lot, okay? He says at the time, to numerous people that he doesn't have an interest in the law firm and that it's worth nothing. What's he say now it's worth? Does he say now he has an interest in the law firm and it's worth something? Does he say it's worth $31,000.00, does she say it's worth $80,000.00? We have a $10,000.00 equity someplace, whether it's in a check from the law firm on December 12, or a right, an interest, an equity, a beneficial interest in the lot. Defendant Eddie Morris files an affidavit in this case. Very, very curious affidavit. It says, I never had a legal interest in the lot. I underlined the word legal, it's not underlined in the affidavit. But

you and I know what's that a way of saying, I had a (inaudible word) of interest all along, but I don't want to admit it under oath. Because if I do admit it under oath, then I admit I cheated the woman. I don't want to do that. So it seems to me that under those circumstances, it would only be appropriate that the Court allow the balance of discovery to be taken, then if there are matters that are right for summary disposition, then let them be brought on for hearing in a normal course where everyone's not rushing pell-mell and head-long into a sea, as it were.

THE COURT: Would everybody agree that when you were here in November, that December 18th would be sufficient time? Everybody agreed to that.

MR. GARRETT: And it might have been, your Honor, had, had they submitted to discovery. I am accused of bad faith for having spoken, what, 50 times on the record during the course of Ms. Bechtold's deposition, but keep in mind she never failed to answer any question put to her. By contrast, Mr. McConnell objected or interceded in Eddie Morris's deposition, 65 times, and I think we've counted, what is it, 48 questions or something like that, that he refused to answer concerning the subject of release, coercion, fraud. Your Honor was never asked squarely on November 17th, can't the Plaintiff or can the Plaintiff not take Edsel Morris's and Donna Piotrowski's depositions. If you read the transcript, the language on which the Defendants rely is kind of sandwiched in and Your Honor is saying, I'm telling you I want discovery on the subject of releases. Now I've got some other motions to hear. What Eddie Morris slips in between your Honor's comments are and they can't take — and they can't harass my family, or words to that effect. So he doesn't say and they can't take Edsel Morris's deposition, and they can't take Donna Piotrowski's deposition and Mr. Penskar, being as new as he was, as to the facts, didn't say, well, wait a minute, time out, what's that mean, does that mean we can't take the deposition of his new wife, which we weren't seeking anyway. Was that his family member that he's talking about? So, here you have a refusal to answer about four dozen questions in Eddie

Morris's deposition, and an absolute refusal to produce Donna Piotrowski for deposition, and another refusal to produce Edsel Morris for deposition, and a motion for protective order when we subpoena her husband, Ralph Piotrowski for a deposition. Clearly, an attempt by the Defendants not to let the facts (inaudible words). And I think that under the circumstance is it's only fair and appropriate that you deny without prejudice the motion for summary disposition. It seems to me that even if your Honor is convinced that all of the necessary discovery has been taken, there are certain aspects of this motion which have as a matter of law got to be denied, even if you believe as you know the law not to be, even if you would believe everything that they say and nothing that she says. Well, you've got to deny that portion of the motion for summary disposition that seeks any relief for Edsel or Donna. They're not named in either one of the releases. They're just not named. There is no indication that they were intended or (inaudible word) third party beneficiaries (inaudible) in those releases. What else has to say even if you believe everything the Defendants have to say? You also have to believe in a case everything that occurred from and after approximately noon on February 17, 1988. Because there's no release that she signed of any sort after noon on February 17, '88. Next, what do I think if you believe just a morsel of what she says is true you have to leave in the case, you have to leave in the case everything because she did tender back the $1,500.00, they don't deny that. She tendered it back immediately, as soon as she learned that he pulled a fast one on her with regard to the lot. What else do you have to leave in the case, given her tender back $1,500.00, even though it was futile, and we've now proven that it was futile.

THE COURT: Was there any other money by the terms of the divorce judgment that she was supposed to get after this 1,500?

MR. GARRETT: No, I don't think so. I'm not sure. I can't — But the answer is, no more money but there were still other executory acts, some of which he still hasn't performed.

THE COURT: Like what?

MR. GARRETT: Well, one of his undertakings in the divorce judgment that he, at no cost to her, would pursue her ex-husband of many years. I mean, she had a prior marriage of about 16, 18 years ago, in which her ex-husband owes her several thousand dollars of child support. She had to do, so far as we can tell, one thing. Mark Evans and Bill Garrett had to beg him, I suppose, to allow her to take her maiden name.

THE COURT: She can do that anyway.

MR. GARRETT: Okay. Now, what else? So she tenders back the $1,500.00 on February 18th, that she got on February 17th, what's that mean that that has to be left in the case? That means that everything is left in the case from and after either April 20 or April 29, 1987, okay? Because — and you've got to decide which is the operative date, the date of the property settlement agreement or the date of the divorce judgment. Then the question is, as we look back, then the question becomes, is there any evidence before the Court as to whether or not the release language in the judgment may be avoided by her either in law or in equity and I use avoided in the lay sense of the term. Even if she can't — even if you were to rule as a matter of law there were latches one, reasonable delay is a matter of time and two, detrimental reliance by the Defendants on the delay as to which I think there's absolutely no credible evidence. Even if you were to find that as a matter of law, that takes care of one Count of an eight, nine, ten Count Complaint. All of the other Counts, of which (inaudible words) in damages. She's still entitled to sue him for damages. In addition she's entitled to sue him for breach of the property settlement, in which I should note, because your Honor will recognize the significance of it, was incorporated but not merged in the divorce judgment. So her rights with regard to the property settlement agreement do not as a matter of law have to go back to the divorce court and never did if the divorce judgment that Eddie Morris prepared had said the property settlement agreement is merged, then arguably her rights to seek independent relief with regard to that agreement would be exclusively from the divorce court, but that is exactly what the property

settlement agreement does not say. Next, let's get this business of Garrett versus Garrett out of the way. At the time I submitted my affidavit to this Court on Thursday, I said, if the language, if the release language in Garrett versus Garrett is the same as this case, then Eddie Morris must have pulled from my divorce papers. I went back — I finally had a breather on Friday, went back and took a look. It isn't. There's no significant similarity between the two items of language, okay? This — a lot of the argument that you have heard from the other side is an attempt to fabricate facts based upon things that they think they learned from the other side. The first time we heard that they came up with the argument that Garrett drafted the divorce language in *Morris* vs. *Morris* was following his review of her notes in discovery, which if you read it, might suggest that; however, she's explained without any controversion by the other side that all that was, was a note by her telling — in which Eddie Morris told her what I supposedly said. I didn't say it. My affidavit says I didn't tell him that. So you have a situation where one of her employers during a period of time is constantly browbeating her to the dismay of not only her, but you can imagine what was going on in the office, a small law office, and this is a case that I believe under all the facts and circumstances entitles the plaintiff to a trial. Thank you.

THE COURT: Why don't we take a short recess they reply.

(Whereupon a short recess was had.)

THE COURT: Before you give a reply, I'm interested in your reply, not only in what you may want to say about the release, but also — just tell me what about after 4/29/87, the date of the judgment.

MR. GARRETT: Can I add 25 words, because something occurred to me in the hall? Literally, 25 words.

THE COURT: Sure.

MR. GARRETT: Thank you. The event that allowed her the freedom of mind and action to bring this lawsuit was the sale of the

Northern Michigan business and property, which closed in late March or early April of 1989, just two or three weeks before this lawsuit was brought. Please think about the allegations that she has made.

THE COURT: I'm sorry, when in '89 did you say?

MR. GARRETT: Late March or early April of '89, just two or three weeks before the lawsuit was brought. Please keep in mind the allegations that she and her sister made about Defendant Eddie Morris's threats and harassment about them and their mother, who sold the place of living and who sold livelihood was that building in Bel Air.

THE COURT: That's what gave rise to the $5,400.00, due to the Defendant?

MR. GARRETT: Right, that's the most he is entitled to. He never breached a contract concerning that if his mama up in Bel Air, okay, is not entitled to any money for her lost wages or lost income, that most he's entitled to as a result of the distribution. And it was that sale and therefore, her freedom, and her sister's freedom, and their mother's freedom from further harassment by that that permitted her the freedom of action to start this case.

MR. MORRIS: Thank you, your Honor. As for acts after 4/29/87, there's another release of course, 2/88 that releases me from conduct. It's my opinion, relating to the marriage or property settlement, to that point in time, after that —

THE COURT: That was on the back of the check?

MR. MORRIS: Yes.

THE COURT: Okay.

MR. MORRIS: After that I left the law firm in August of '88, so there's a narrow window there that they may try to get fact issues into. I think your Honor can address those when you address the sanctions issue. I don't think this case is going to survive, in other words, if your Honor says, go ahead and pay sanctions and pay

them within the next ten days or have your case dismissed. And I — that's what I think should be done. But let me — Mr. McConnell's asked me to be very brief, and I'm going to try to do that, because this is rebuttal. Very brief. One, Mr. Kriger and Garrett want the Court to believe that the court rule, the one-year limitation rule only applies to equitable actions. It's not what the court rule says. There has to be a mechanism for damage or legal actions as well. (C)(3), 2.612(C)(3) applies to

[PAGES 122-149]MR. MORRIS: My dad was going to help her out basically, if she couldn't find a place. But she found a place and she never exercised the option.

THE COURT: Okay. Okay, first the easiest one, at least for the Court, is the motion made by Ken Morris on behalf of Edsel Morris and Donna Piotrowski. There are some allegations and I've gone through the Complaint to see what the allegations were against these two, and I don't see anything of a serious nature against them. First we get to the question of whether or not Edsel Morris was under an obligation to reconvey or resell the condominium to the Plaintiff in this case. In the Complaint, there's no allegation that there is any kind of an agreement that he violated by not reconveying it to her or reselling it to her. There is no allegation that there was anything in writing, by which Edsel Morris would be bound. There's further no allegation that she attempted to exercise even any kind of an oral agreement. So, she would have no claim against Edsel Morris for that. As far as Donna Piotrowski is concerned, the only allegation there is that she took property in her name, when she didn't even intend it to be hers because she lives in Westland, has a business in Westland and never intended to move out to Clarkston. Well, the only evidence that I see in this case is the fact that Eddie Morris said that she should buy it as an investment, which she did. Some people buy property in Florida, California as an investment without ever having gone there or ever intending to live there. Eddie Morris's representation that it was a good investment — this property was purchased. The evidence does indicate that Eddie Morris did make the original deposit of a

thousand dollars, which isn't too important. He didn't close on this deal. The deal was closed by Donna Piotrowski, personally. The fact it was in her name alone, I can see no importance to that, whether her husband's name was on it or not. Apparently she borrowed some money from her father and put it in her name alone. It's the way some people do business. And I see nothing wrong with that, that's actionable. What is really — interests the Court is the fact that the only allegation here made is one of a possibility that perhaps I sue Donna — and Donna Piotrowski and Edsel Morris based upon the fact that I hope that subsequent discovery will show that they were conniving and that they colluded against me and that I have a cause of action against them. You know, that's the thing that lawsuits are made of. When somebody pays his money to start a lawsuit and signs a pleading, you've got to have more than, I hope that discovery will show that I have a cause of action. This was not done in this case. There's no claim that the Plaintiff ever tried to exercise any option. And the fact that somebody may have told Eddie Morris that there's an agreement — when it was even his father that said well, we have an agreement. There's no indication that Eddie Morris ever saw any written agreement and as lawyers we all know that an agreement to sell property if it's not executed, there nothing to take it out of the Statute of Frauds, is not enforceable, and there's no evidence that it was ever tried to be enforced and that the Statute which raises the defense. The fact that this property was bought through Eddie Morris's finding it and Donna Piotrowski bought it in her name, there's no evidence whatsoever that there was any indication that it was made to defraud the Plaintiff in this case. The — it may or may not be important, but the only claim here is that eventually the property was sold and there was a loss. So, apparently she wasn't deluded unless the claim is that well, there was some equity in there during the divorce. But just to hope that something will turn up to show that there was a fraud is not enough to bottom a lawsuit. And I would grant the motion for summary disposition as to Edsel Morris and Donna Piotrowski.

Appendix A-4
A-4.21
Transcript, 12/18/89 Hearing

There is a — the next issue on Eddie Morris. In reading the judgment which is dated April 29th, 1987, it provides, that it's further ordered and adjudged that except for the obligations created by this judgment and the property settlement agreement, each party releases the other from all demands or other claims, whether accrued or unaccrued, known or unknown, that have arisen or may arise from any act or omission prior to the execution of said property settlement agreement. Now, the property settlement agreement, if you look at that, it's dated —

MR. MORRIS: — 4/20/87, it's up in the upper right-hand corner.

THE COURT: — 4/20/87, just a few days before the divorce was entered. It's not signed and it wouldn't be required to be signed by the attorneys. However, she did have a capable attorney and this capable attorney did indicate that — I've got to back up, I've got to back up. The agreement indicates that she's read it, understands it, had the opportunity to consult with counsel concerning the same, and she agrees to the terms and that it was executed of her own free will and not pursuant to any coercion or duress. What she's doing now is repudiating this. Her contention is that she was not in a state of mind not to sign this; however, she's an intelligent person, this was in there and she saw it. Additionally, if her attorneys feel that well, she signed that under duress, nevertheless, they went ahead and cooperated in the granting of the judgment, whether it was by withdrawal, or whatever it was, they did sign the judgment, am I right or wrong in that?

MR. MORRIS: You're right, your Honor.

THE COURT: They did sign the judgment, that was my understanding. They signed the judgment, they knew that the property settlement was in some way, whether incorporated or made a part of, it doesn't matter. They knew it was incorporated, they knew what its terms were and if they thought there was coercion, they had an obligation not to sign it. So I have to assume that they agreed with the provisions in the divorce judgment, not having

indicated anything to the contrary and signing the judgment and letting probably Eddie Morris take the judgment by default. So this Court's inescapable conclusion is that she understood what she was signing in the property settlement, she understood the provision in the judgment or her attorneys understood it and that's attributable to her. Her attorneys subsequently signed affidavits she was nervous and didn't understand it and under duress and yet they saw this provision in there and they incorporated this mutual release in the judgment. Based upon that, this Court would find that the mutual release in the judgment is valid and that it does release Eddie Morris of any known or unknown claims, accrued or unaccrued, up through the execution of the property settlement agreement which was about — if that's dated 4/20, it was dated nine days before the judgment was entered.

We get to the question of certain claims made in the Amended Complaint. Now, that Amended Complaint it's a long one, 27 pages, dated November 16th, 1989. I guess at that time the Plaintiff was in pro per; but another inescapable conclusion is that she had a lot of help in preparing this from some attorney just as the original Complaint was either plagiarized from some former Complaint which talked about parties who are not parties to this case claiming something against them. And yet a lot of this is the same with some of that deleted. So I'm satisfied that she had some help. But anyway she signs it and when she signs a Complaint she warrants to the Court that she's made some investigation of the facts and that she has some knowledge that her Complaint was well taken.

Among the common allegations, we've got a lot of allegations in here about certain things, which I'll get to in just a minute. The specific paragraph headings other than common complaints, talk about violation of the Elliott-Larsen Civil Rights Act. Well, that is a cause of action which either accrued or could have accrued, known or unknown, surely known before the divorce judgment was entered into and yet she released all these claims. Among these claims were things that happened as a result of her employment

with the Garrett office at the time that Eddie Morris was there. The Counts for fraud are stated in very general terms. You talk about damages over 10,000 without specifically indicating to the Court what these damages are. Misrepresentation goes hand in hand with fraud and it's the type of thing that was released knowingly. The damages for intentional infliction of emotional distress, I've studied those and I've even gone back to the original common allegations. Nowhere in these common allegations is there anything that rises to the quantum that's necessary to prove intentional inflection of emotional distress. I'm going to summarily discount the monetary claims by the Plaintiff against Defendant Eddie Morris; because when you make monetary claims you're asking for money and you're not seeking anything for this intentional infliction of emotional distress which goes to one's hurt feelings and one's mental distress. I'm going to get back to that in just a minute about the mental distress. But all that which has to do with property and that, has to do with failure to pay certain things, that's money, you're talking about not mental distress. On mental distress, some of the things about he said he would adopt the baby and he didn't adopt the baby and the duress that he used against her if any, or on her in the employment situation, all that, at least up to the date of the divorce judgment, has been eradicated by the mutual release. But, intentional infliction of emotional distress, is that type which, and these are the words which are used in every decision, which the common person on the street would look at and say that's outrageous. And I have seen no allegations to make anything outrageous, a little mean, a little spiteful as these parties were during the divorce, perhaps. I'm only saying perhaps. But nothing that rises to the intentional infliction of emotional distress, like taking somebody's children away from them, alienating their affections, convincing them that their mother is a bad person. That would bother me as in the *Vhama* case, a case for intentional infliction of emotional distress and that was all the the *Vhama* case stood for. It's the only case, to my knowledge, where one spouse sued another for intentional infliction of emotional distress. The only other case that I've seen on this issue was a suit for assault and battery during the

divorce where they claimed injuries. And while the claim was — the divorce court took care of all that — the trial court held that there was no release of an assault and battery claim, and they let the case go on and it went to trial. That's completely different from this case, because in that case, there was no mutual release and that was the basis upon which the trial court agreed to let the case go on and it actually did go to trial.

There are a lot of other issues; one issue is whether or not the claims of the Plaintiff arise out of the divorce judgment substantially over a year after the judgment when this claim is made. I'm satisfied that the claim for these monetary elements of damages are made substantially one year after when the evidence indicates that whatever she knew now, she had some idea about then and didn't bring a case. The fact that there's a contention that she was so upset that she threatened suicide, I don't think there was any actual attempt at suicide in any of the pleadings that I read. A lot of people claim that they're going to kill themselves unless somebody does something.

MR. KRIGER: Your Honor, there was (inaudible words).

THE COURT: There was actual? What was done? Because I don't recall it in the pleadings.

MR. KRIGER: No, there was an overdose of sleeping pills, she was hospitalized for two weeks.

MR. MORRIS: That was in February of '87 before the mutual release, your Honor.

THE COURT: Interesting.

MR. KRIGER: Well, I —

THE COURT: But, having to do with her state of mind, that's okay. But then there was a release, and within a year, she still didn't do anything to upset that release. As far as the question of tender back, I somewhat agree with Mr. Garrett that not in all cases is it required, but this decision is not based upon a failure to tender

back. I'm satisfied that she did do many acts in reliance upon this judgment, did accept some money upon reliance on this judgment and did retain other things that she got in reliance upon the judgment. So the Court would order that this case not only for the things that I just mentioned now, but for all the things that are in all the parties' briefs up to this point, I'm going to grant the motion for summary judgment as to Eddie Morris.

MR. MORRIS: Thank you, your Honor.

THE COURT: Just a minute, I'm not quite done. I'm done. This is yours, Mr. Morris.

MR. MORRIS: Thank you, your Honor. Mr. McConnell has the next motion.

MR. MC CONNELL: If it please the Court, and I know how to be briefer than my client.

THE COURT: I hope so.

MR. MC CONNELL: The matter of sanctions are now to be addressed by me. I'm handing you a two-page summary of the relevant court rule sections and also the December 1989 summary out of Calahan's Michigan Pleading of Practice. And while I'm doing that, I'm sure that the Court will grant the teaching of the just good old-fashioned memory refreshment, I'll wait until you —

THE COURT: No, go ahead, I've read it.

MR. MC CONNELL: All right. The Court has now ruled that the Plaintiff's Complaint was not properly the subject of having been investigated before it was filed. It was filed in the face of the sound release contained in the Judgment of Divorce. It offered no basis to escape from established existing law or to seek modification of established existing law that releases in court judgments being what they say, no good faith investigation and Mr. Garrett is a party to this whole thing and has caused it to go on for six weeks, generating more than five pounds of paper and there's been nothing offered by way of the usual careful methodical homework that any

person must do before they make charges of this nature. The State Legislature in the section of RJA that's cited at the end of the memorandum, has declared it to be the public policy of Michigan, binding on this Court that frivolous commands the granting of sanctions and it is defined by the people in Lansing as meaning the party's legal position devoid of arguable legal merit. Now, if you just back up and think of what you've just ruled here, you have, I think, met that standard end this welter of paper of the relief sought was dumped on you and it's all devoid of legal merit. Yesterday as we were plowing through this, because I've been tied up in more interesting matters, I saw Eddie's time records just for October and November, 140 hours. That will be coming into you, Judge Kaufman, in a solemn affidavit that you may rely on that representation for the purposes of doing what should be done here today. When that affidavit comes in, if you find that you want to back up and modify the order that I think you ought to enter today, just haul off and ex parte, shrink it down. I have only 20 hours of time on this matter, thank God. Eddie's rate when he was still with Garrett was being billed out between $125.00 and $135.00 an hour by Garrett. It's now at $150.00 with adjustments, naturally, depending on the circumstances. This kind of annoyance should be charged certainly at that rate. Mine is grossly exorbitant, $250.00, but modify it down because you must not lose sight of the community standard, the objective community standard which you must apply. You can listen to what my rate is, but modify it so it's fair. You've heard Ken Morris and I trust, he can likewise put an affidavit in showing the represented 50 hours. When you get all through, it seems to me, Eddie's comes out at about $21,000.00 for his 140 hours, mine might be $5,000.00, but that's a pretty heavy rate, do anything you like with it, I don't care. Ken Morris, he's had a number of years additional experience, maybe $7,500.00 looking at around $33,000.00. Now, if you do nothing, this irritant will pop up again. Judge Gage had to put up with it up until June of this year and she's going to have to put up with a motion now to set aside the without prejudice part and award sanctions because there was not the disclosure that this bunch of stuff had been filed. It was concealed

from her, concealed from us. We would not have consented but for the concealment. But that's Garrett's style, it's well known in the community of legal and I think judicial also. I would urge that you exercise your God given judgment, award sanction, and if it's gotta be against both of them, both of them, fix a reasonable time for it to be paid, failing which the judgment becomes final and execution can issue. I guess that's all that we — you can do now. Again, I renew the — I'm handing a proposed order with copies to counsel, found it blank and an original to the Court and if you prefer waiting until you see the affidavits, go right ahead, it doesn't make a bit of difference. But whatever you do will be right. Finally — that cleans up the motion for sanctions. Mr. Ken Morris may have something to say about it. I'm now handing you a proposed order with copies to Counsel to release the Eddie Morris converted monies by this Plaintiff that's sitting in your clerk's office and I have narrowed the order from the way my client prepared it last evening. He was going too far, and we've shortened it down, or struck it down to where it belongs, and it may be signed, I think, without any hearing from the other side. They converted that money, the Plaintiff did, in April — in March or April when the business was sold, put it on her own bank account, used it, then filed this silly lawsuit in April, said they were tendering it to the Court and didn't bother bringing in a court order to pay it into Court and it was your order of December the 4th, that finally got it into the Court. That's just old common law thievery and interest must be afforded. The order should be signed directing it to be paid over forthwith to Eddie, with usual interest.

MR. MORRIS: Your Honor, all I have to add is I join in the motion for sanctions. It becomes obvious that unless the motion isn't granted, Mr. Garrett is going to try to bang our heads against the wall, and spend $80,000.00 on this case, too.

THE COURT: What was the last thing — I didn't hear the last thing you said.

MR. MORRIS: If the motion isn't granted, your Honor, Mr. Garrett is going to take other measures and try to allow us — make

us spend a lot more money before it's over and time. If he can't be discouraged, this will go on for an infinity.

THE COURT: Mr. Kriger?

MR. MC CONNELL: I must make one correction, in no respect indicated this newly appearing lawyer, (inaudible words) sanctions. He just showed up and he ought to have known better, but he did and he didn't do anything other than try to help this Court a little bit within the framework. But the harm was all done by Garrett, he ought to be (inaudible) for the remedy.

MR. KRIGER: Your Honor, Mr. Garrett will speak as to the sanction motion against him. I would just like to speak on behalf of Elizabeth Bechtold. Your Honor, I believe that sanctions in this case would be wholly inappropriate. I respectfully disagree with your ruling. I believe that there was substantial evidence on the issue —

THE COURT: See that's a fate accompli. Just argue.

MR. KRIGER: I understand that, but I think it's important to understand why I don't believe that this was a vexatious lawsuit. What I — let me back just back up. I was referred to Mr. Garrett by another attorney and I came and I met with Mr. Garrett and I met with Ms. Bechtold and my first blush, as I indicated earlier to you, was this was another bitter divorce battle where the parties could just not let sleeping dogs lie. But then I said, well, let me look it over and I explored it, and I explored it —

THE COURT: You told me all that.

MR. KRIGER: And then I see — but I see affidavits from people in Garrett's Law Firm, that work at Garrett's Law Firm, and they said Mr. Morris, Eddie Morris, threatened to fire Ms. Bechtold if she didn't sign the releases. Once that fact was established in my mind, I believed that there was something to this lawsuit. Let me — and maybe I should state and maybe I don't have common sense, but I took the case on a contingency agreement because I believed that if I could get it to a jury, that I could get something

from a jury. That if the jury believed that he put this woman through this kind of trauma, the suicide and everything else — attempt — and everything else that occurred, that they would award her some kind of damages. I believed there was merit to such an extent and obviously this Court disagrees as to the merit of the lawsuit, that I took it on a contingency fee. I don't believe that the Court can say that this case was completely without merit. Not when we have affidavits from people in the office that some threats made by Eddie Morris on the termination of employment. Not when we have an attorney signing an affidavit that indicates she was under complete emotional distress, wouldn't even allow us to make motions to compel interrogatories. Based — and I'm not going to talk too much longer, your Honor, based on those things, and the fact that Ms. Bechtold has been through the ringer, I believe it would be appropriate to impose any sanctions on Miss Bechtold. If the Court has any questions, I'd be more than happy to try to answer them. I mean, she's been through enough, I don't think it would serve any purpose to impose sanctions upon her.

MR. GARRETT: First, your Honor, with regard to the request for sanctions, I believe I am correct, but I'm not sufficiently familiar with all the papers that the Court has been deluged with to be certain that I'm correct in saying that the request for sanctions is premised, according to the pleadings, on MCR 2.114(D) and (E). It is not premised, to my recollection, upon the State Statute and to the extent that this attempt by them to amend the motion to make me respond to allegations that I could not reasonably be expected to have responded to, I object. Next, let's look at the court rules, because the court rule and the statute are different. The court rule says that sanctions may be imposed, it's purely discretionary, under circumstances where in terms of a legal sense, it's not based upon existing law or a reasonable argument for the extension modification or reversal of existing law. As to facts, the question is whether or not there was a reasonable factual investigation.

THE COURT: Let me just correct you on the one thing. You said that the Statute is discretionary. I'm sorry, you said the rule is discretionary. It's not.

MR. GARRETT: I'm sorry, I stand corrected.

THE COURT: The Rule says this, if a pleading is signed in violation of this Rule, the Court on motion of a party or its own initiative shall impose on the person who signed it.

MR. GARRETT: I'm sorry, I'm sorry —

THE COURT: No, it's mandatory — I knew it was mandatory, that's what I looked at it.

MR. GARRETT: You're right, and the distinction I should have made is that the standard for imposition are different between the Statute and the court rule and the amounts to be imposed are different under the Statute and the court rule. The Statute talks about how you compute the amount, the court rules doesn't. The court rule says that you know, you can throw somebody in jail if they — if you find that they violated 2.114 (D) and (E). That is not one of the alternatives specified by the Statute, and the court rule does not specify the types of damages that the Statute does. So, first to the extent that they're attempting to modify their argument to — with reference to the Statute, I object. Second, I believe that the plethora of affidavits filed in this case establishes that there were substantial facts upon which to ground this lawsuit. Your Honor obviously has found that the lawsuit ought to be dismissed, but only after lengthy argument with regard to primarily the facts. In the course of your Honor's pronouncements, just recently, the only thing specifically that you referred to in terms of the lack of serious allegations were — according to my notes, was that you didn't there were any serious allegations about Edsel and Donna Piotrowski. Next, in determining whether or not to impose sanctions, I think you have to determine whether or not there was some basis in law or for the reasonable extension or reversal or modification in existing law on which to premise the Complaint. Your Honor, earlier today, inquired as to wasn't it the Plaintiff that cited *Vhama*. In fact, your Honor, it was your Honor that first cited *Vhama*.

THE COURT: I first cited it, but then —

THE COURT: I first cited it, but then —

MR. GARRETT: I understand.

THE COURT: — in the brief somebody else cited it.

MR. GARRETT: We brought it up —

THE COURT: Sure.

MR. GARRETT: — so what I am suggesting to you is, that based upon the facts that were established by the affidavits of Bechtold, Evans, Garrett, McCarthy (ph), Trepke (ph), Stuart Trepke (ph), the Pontiac Policeman, Eric McCann, Mark Haffley (ph), I think that it's difficult for the Court to conclude that there is not substantial factual basis for the Complaint. In addition, I think you also have to take into consideration the fact that due to the Defendant's refusal to make discovery and their obstruction of discovery, other facts not which we were on a fishing expedition to get but other facts which we could reasonably have obtained from them, but were not available by affidavit; were available to buttress the Complaint. So I believe that based upon the briefs that we filed in support of the case, even if we didn't support this case, even though your Honor is well aware of the fact that you could have granted the motion for summary disposition, I think that there is ample legal authority for us to contend that there was, if not existing law, a reasonable basis for the extension, modification or reversal of existing law to allow the Complaint to exist. Next, before it slips through the cracks, let me address the, "order directing clerk to release funds forthwith and granting other releases". I have not had the chance to read the language of the other orders, but I note that it's it's rather presumptuous for the other side to presume that the Court will make certain findings that the Court hasn't expressly made. And as I now glance at the order, post order regarding sanctions, I — I see the same thing. Here the other side is presuming to know what the Court's going to conclude. I'll let you draw whatever conclusions you want with regard to the order regarding sanctions which you undoubtedly will. But please note that if you subscribe and enter the order directing the clerk to release funds forthwith

and granting certain other relief, that amongst other things, you are not only finding an act of conversion occurred, which you haven't found, and which there's been no argument about, but in addition, you're ordering that the Plaintiff pay a statutory rate of interest, whatever that means. I presume they're talking about MCLA 600.6013, the judgment rate of interest, that she pay a statutory rate of interest from a date that precedes the filing of the Complaint. And in addition, by signing that order, you are, in effect, granting the Defendant Eddie Morris a summary judgment with regard to matters that are clearly and unequivocally attested by affidavit. Are you finding, as a matter of law, and are you not finding as a matter of law if you enter that judgment, that Eddie Morris didn't breach any of the oral or written obligations that he had with regard to the Northern Michigan property? Because I suggest to you that there is no adequate basis in this record for making such a finding and that by distributing the monies to her, you are, in essence, saying that she could never have her day in Court as to whether the business or the property or their value were diminished by so much as his breaches of written contracts, including obligations in the property settlement agreement which were not merged in the judgment. So, I suggest to you that if you are, as you are obviously are, bound and determined to dismiss this case once and for all, that money that's paid to the Clerk of the Court should not go to Eddie Morris; it ought to go back to her. They are still — she is still entitled to her day in court on the question of whether or not his acts and omissions in breaching agreements concerning the Northern Michigan property caused her damages. Failure to cooperate in obtaining financing, for example. And I guess what I'm saying is, that the — under the circumstances, I think that order is far too broad. In addition, the order purports to require an accounting.

MR. MC CONNELL: I'll abandon that provision in the last paragraph of the order. I didn't want it in there and it has nothing to do with — strike that.

THE COURT: Yes, I've already stricken it.

MR. MC CONNELL: Good. We think alike.

THE COURT: (inaudible words).

MR. GARRETT: Unless Judge McConnell's statements, your Honor, be treated as the truth, let me indicate to you that contrary to Mr. McConnell's statements at the outset of today, Judge Gage not only did not impose sanctions, she expressly told Eddie Morris and Ken McConnell and me in her chambers on May 2, 1988, that she was not going to impose sanctions with regard to their allegations that they were frivolous pleadings and there is — although there was not a formal court record of that proceeding, at an appropriate time in that case, I made a written verified allegation to that effect which was not denied by them. So, in terms of whether or not sanctions should be imposed, based upon the record of that case of which I ask you to take judicial notice, I think you ought to follow Judge Gage's lead and decline to impose sanctions. Until I know whether or not the Court intends to impose sanctions on me or Ms. Bechtold, it seems to me it would be wasting your time for me to argue further, since I don't know in what direction you're headed, if you want — if you think it's necessary that I argue the question of the amount of sanctions, I will, but I don't — there's no point in my wasting your time if you're not going to grant sanctions.

THE COURT: First, as to the proffered order directing the clerk to release funds forthwith and granting other relief, what the Court is going to do is order that the $5,439.07 which was filed, will be forthwith released to the Defendant, Eddie Morris and clerk will be directed to pay these funds. On the next paragraph, the Court has deleted certain portions of it. I'm not going to make any specific findings about conversion or anything like that, just that he was due these funds. And I'm just going to order that the Plaintiff pay to Eddie Morris interest at the Statutory rate or these funds from the date she received said funds to the date of this order. Probably nothing will happen on that aspect of the order, but I'm not going to make any finding, and I'm deleting the last paragraph of that. As far as the sanctions are concerned for bringing this lawsuit, I'm satisfied that there was a valid release, that the Plaintiff should have

known about this release, her attorney should have known about this release, and so many of the things in there are just really vexatious and spiteful, and really shouldn't be the basis of bothering the Court with that kind of a lawsuit when there is by any stretch of the imagination, no intentional infliction of emotional distress which rises to the level that our Courts have defined it. I am going to order that sanctions be ordered. And the sanctions that I'm going to order are the following: To — I realize it's substantially less than the claim but I've got to take into account who's paying these sanctions and what their financial status may be. I'm going to order the following: $2,500.00 to Kenneth McConnell, $7,500.00 to Eddie Morris, and $1,500.00 to Ken Morris.

MR. MORRIS: That's fine, thank you.

(Hearing concluded).

Appendix A-4
A-4.35
Transcript, 12/18/89 Hearing

REPORTER'S CERTIFICATE

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

I, DAVID A. CUCINELLA, CSMR-3614, Certified Court Reporter acting in and for the Third Judicial Circuit, Wayne County, State of Michigan, do hereby certify that the foregoing pages 1 through 148, inclusive, was reduced to typewritten form and comprise a true rendition of the proceedings taken by means of video recordation without the benefit of a court reporter present during the proceedings in the above-entitled matter, on Monday, December 18, 1989.

I further certify that I, DAVID A. CUCINELLA, will assume no responsibility for any events that occurred during the above proceedings for any inaudible responses by any party or parties that are not discernible on the video of the proceedings.

I FURTHER CERTIFY THAT MY CERTIFICATE ANNEXED HERETO APPLIES ONLY TO THE ORIGINAL TYPEWRITTEN, SIGNED, CERTIFIED TRANSCRIPT. THE UNDERSIGNED ASSUMES NO RESPONSIBILITY FOR THE ACCURACY OF ANY REPRODUCED COPIES NOT MADE UNDER MY CONTROL OR SUPERVISION.

/s/ David A. Cucinella
DAVID A. CUCINELLA, CSMR-3614
Certified Court Reporter

Dated: This 11th day of January, 1990.

Appendix A-5
A-5.1
Order, 12/18/89

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff

-vs.- Case No. 89-909989-CZ

EDDIE M. MORRIS, EDSEL MORRIS, and DONNA PIOTROWSKI,
Defendants. HON. CHARLES KAUFMAN

Elizabeth A. Bechtold
Plaintiff, In Pro Per

Kenneth B. McConnell (P17326)
Of Counsel To Eddie M. Morris

E. Michael Morris (P31547)
Defendant, In Pro Per
2000 N. Woodward Ave., Ste. 100
Bloomfield Hills, MI 48013
(313) 645-1106

Kenneth J. Morris (P17983)
Attorney for Defendants
Edsel Morris and Donna Piotrowski

ORDER DIRECTING CLERK TO RELEASE FUNDS FORTHWITH AND GRANTING OTHER RELIEF

At a session of said Court,
held in Detroit, Michigan,
on /s/ December 18, 1989

Appendix A-5
A-5.2
Order, 12/18/89

PRESENT: HON. CHARLES KAUFMAN
Circuit Judge

This court having issued its Order Re Deposit of Funds on December 4, 1989; upon a hearing before this court, with the court fully advised in the premises;

IT IS HEREBY ORDERED that the monies previously deposited with the clerk of this court ($5,439.07) be, and hereby are released forthwith to the Defendant Eddie M. Morris. The clerk is directed to pay these funds to Mr. Morris.

IT IS FURTHER ORDERED that, Plaintiff shall pay to Defendant Eddie M. Morris interest at the statutory rate on these funds from the date she received said funds to the date of this order. Said payment shall be made within 5 business days from the date of this order.

/s/ Charles Kaufman
HON. CHARLES KAUFMAN
Circuit Judge

c: MORRIS.7

A TRUE COPY
JAMES R. KILLEEN
CLERK
BY /s/ R. Eldridge Deputy Clerk

Appendix B-0

B-0.1

Affidavits and Papers Filed In The Trial Court

AFFIDAVIT OF ERIC J. McCANN

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

Eric J. McCann, being first duly sworn, deposes and says:

1. If sworn as a witness , I can testify competently and based upon my personal knowledge to the truth of the matters stated herein.

2. I am and since 1968 have been an attorney duly licensed to practice law in the State of Michigan. My former law firm, Beier, Howlett, Hayward, McCann, Jones, Kingsepp & Shea, represented Ms. Bechtold for a one month period beginning on or about March 17, 1989 in a divorce action filed against her by Eddie Morris. The work was done by myself and Mark Hafeli.

3. During our representation of Ms. Bechtold, it was abundantly clear that she was suffering from severe emotional distress caused by her relationship with her then husband, Eddie Morris.

4. Throughout the representation, Eddie Morris' contention was that he had no interest in the Garratt law firms and that whatever interest he might claim in the Garratt law firms was worth nothing.

5. During the course of that representation, Ms. Bechtold insisted that my firm not compel answers to interrogatories or seek any other discovery from Eddie Morris or the Garratt law firms. She expressed fear that her employment would be terminated, leaving her with no means of support if such were pursued.

6. Although we believed the settlement proposed by Eddie Morris was not fair or reasonable to Ms. Bechtold and we recommended to her that she not accept that or any similar settlement, she insisted on accepting the settlement because she could not mentally or physically put up with the ordeal (not an ordinary divorce) to which Eddie Morris was subjecting her. (*See* April 22, 1987 letter

attached hereto as Exhibit "A").

7. Furthering his attempts to pressure a settlement in this case, Eddie Morris sent a letter to my firm pressuring us to review the documents and approve them. The letter was clearly a financial threat aimed at pressuring us into approving documents we felt were opposed to our client's best interest. See Exhibit "B".

8. In my opinion, due to Ms. Bechtold's emotional trauma induced by Eddie Morris, Ms. Bechtold was incapable of conducting an attorney-client relationship, incapable of accepting her attorneys' advice, and incapable of any knowing understanding of her rights.

9. Ms. Bechtold was so mentally brow beaten by her husband/employer Eddie Morris that she could not act competently in our representation of her.

10. To my knowledge, my firm did not review the proposed settlement (agreement and judgment) with Ms. Bechtold on a paragraph by paragraph basis and had no discussion with her about the paragraph entitled "Mutual Releases" on page 4 of the Judgment.

11. In my opinion, Ms. Bechtold's execution of the "Property Settlement" and submission to the Judgement Of Divorce was the direct product of her weakened mental condition.

_____
Eric J. McCann

Subscribed and sworn to before me
this 14th day of December, 1989.

_____
Alicia A. McCully, Notary Public
Oakland County, Michigan
My commission expires: 3-6-91

1016b

Appendix B-0
B-0.3
Affidavits and Papers Filed In The Trial Court
STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DORAL V. PAULEY and
JANE M. PAULEY,
Plaintiffs/Counter-
Defendants, No. 88 361909 CZ

-vs- Hon. Gene Schnelz

GARRATT & EVANS, P.C.
and C. WILLIAM GARRATT,
Defendants/Counter-
Plaintiffs.

ERIC J. MCCANN (P17276)
Attorney for Plaintiffs
33 Bloomfield Hills Parkway
Suite 155
Bloomfield Hills, MI 48103
(313) 647-9505

DAVID W. POTTS (P19043)
Attorney for Defendant/Counter-
Plaintiff P.C. Only
300 E. Maple Road, Third Floor
Birmingham, MI 48011
(313) 644-4840

C. WILLIAM GARRATT (P13858)
Defendant/Counter-Plaintiff
In Pro Per
300 E. Long Lake Road
Suite 375
Bloomfield Hills, MI 48013
(313) 645-1450

Appendix B-0
B-0.4
Affidavits and Papers Filed In The Trial Court

PLAINTIFFS' ANSWER TO DEFENDANTS' MOTION TO DISQUALIFY PLAINTIFFS' COUNSEL

NOW COME the Plaintiffs, by and through their undersigned counsel and hereby oppose the motion to Disqualify Plaintiffs' Counsel for the following reasons:

1. Plaintiffs have selected Eric J. McCann as their attorney, and are entitled to be represented by him.

2. Defendants' motion is frivolous and without merit.

3. Defendants' motion is untimely for if Defendants truly believed there was a conflict, they should have raised it at an earlier time.

4. Eric J. McCann never represented C. William Garratt, and never represented Elizabeth Bechtold. Although Elizabeth Bechtold did consult with Eric J. McCann, he declined to represent her and referred her to Mark Hafeli, a lawyer in Eric J. McCann's former firm of Beier, Howlett. That representation, however, ended some time ago.

5. At no time during any consultation with Defendant Garratt or Elizabeth Bechtold were any confidential and privileged matters revealed to him that are the subject of this litigation.

WHEREFORE, Plaintiffs pray that Defendants' motion be denied.

ERIC J. McCANN, P.C.

By: _____
Eric J. McCann (P17276)
Attorney for Plaintiffs
33 Bloomfield Hills Parkway
Suite 155
Bloomfield Hills, MI 48013
Phone: (313) 647-9505

DATED: April _____, 1989

Appendix B-0

B-0.5

Affidavits and Papers Filed In The Trial Court

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by mailing the same to them at their respective business addresses as disclosed by the pleadings of record herein, with postage prepaid thereon on April _____, 1989.

_____

Sharon R. Badder

A And it says, "Please provide a check for $2,025.37."

Q (By Mr. Kenneth Morris) And that was provided, wasn't it?

A I assume it was, although I haven't seen it.

Q It was asked that it be delivered to the Garratt Law Firm, and both you and your sister work there?

A That is correct.

Q And you were aware that she was having this hand-delivered to Eddie Morris?

A I knew she was going to ask him for the money. I don't know that I was aware that she had that hand-delivered to Eddie when she had it hand-delivered.

Q And you agreed with her asking for the money; right?

A I—

MR. GARRATT: The question is whether you agreed with your sister to ask him for the money?

A The balance on the note had to be paid off.

I didn't tell her not to ask for the money.

Q (By Mr. Kenneth Morris) The Property Settlement provided that the husband would share in the expenses to the extent of his twenty-five percent

read back the following question:

Q Isn't it true that this two thousand dollars, the twenty-five percent, that you said you were aware that your sister was collecting, was because it was provided for in the Property Settlement?

A I am lost. Can you restate it?

MR. GARRATT: I object to the form of the question.

You can take an answer.

A Among other things, he was supposed to pay for twenty-five

percent of the expenses, that is correct.

Q (By Mr. Kenneth Morris) Now you had the Divorce Judgment in you possession before it was entered by the court; didn't you?

A I don't believe so.

Q Let me show you Exhibit Twenty-Six. Is that your signature on that letter?

A It appears to be, yes.

Q Is there any question in your mind about it?

A The question in my mind is I have never seen the letter before.

Q But you signed it?

Appendix B-0
B-0.8
Affidavits and Papers Filed In The Trial Court
STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD, Plaintiff,	Honorable Charles Kaufman
-VS.-	
EDDIE M. MORRIS, EDSEL MORRIS, AND DONNA PIOTROWSKI Defendants.	Civil Action No. 89-909989-CZ

C. WILLIAM GARRATT (P13858)
Garratt & Evans, P.C.
Attorney for Plaintiff
300 East Long Lake Road
Suite 375
Bloomfield Hills, Michigan 48013
645-1450

KENNETH B. MCCONNELL (P17326)
Of Counsel To Eddie M. Morris

E. MICHAEL MORRIS (P31547)
In Pro Per

KENNETH J. MORRIS (P17983)
Attorney for Defendants
Edsel Morris and Donna Piotrowski

AFFIDAVIT OF PLAINTIFF

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

Elizabeth A. Bechtold, being first duly sworn, says:

Appendix B-0
B-0.9
Affidavits and Papers Filed In The Trial Court

1. I am the Plaintiff in the above-entitled action and, if sworn as a witness, can testify competently and based upon my personal knowledge to the truth of the following facts.

2. Each and every allegation in my First Amended Complaint in the above-entitled action is true to the best of knowledge, information and belief with one arguable exception. That sole exception is that the events described on page 17 of the First Amended Complaint in paragraph 15(c)(iv) occurred on February 18, 1988 rather than February 17, 1988 as the pleading may be read to imply. The difference is inconsequential.

3. Because of the time constraints mentioned below, it is impossible for me to recount in an Affidavit to be filed by the date hereof each and every false statement of fact, false innuendo, false representation and false implication in the Defendants' papers that have been filed and served upon me on and since December 11, 1989 and each and every fact that disproves Defendants' false allegations. Therefore, to indicate to this Court the statements which I know to be false or misleading, I have attached a copy of Defendant Eddie Morris' latest supplement and highlighted those statements that are false and/or misleading.

4. Since receipt of Defendants' pleadings on December 11, 1987 and thereafter, numerous other matters have made it impossible for me to spend the time necessary to respond completely and adequately to said pleadings. Among other things:

(a) I had to and did submit on December 12, 1989 a term paper worth 35% of my grade at an Oakland University course where I am in my junior year;

(b) I was required to prepare for and attend two depositions, assist in the preparation for an arbitration concerning a major case, and perform administrative duties due to the office manager's unexpected absence from the law firm for the entire day of December 13, 1989;

(c) I am presently enrolled in two college courses which meet

from 6:30 p.m. to 9:50 p.m. every Tuesday and Thursday night and have been forced to spend considerable time completing homework assignments for those classes.

Given the aforesaid time constraints, I could not obtain more Affidavits than those being filed simultaneously herewith.

5. With respect to copies of documents that I produced at my deposition *duces tecum* that are attached to Defendant's pleadings, the following statements are true:

(a) With respect to Exhibit "B", a single page note dated April 28, 1987 (a date that is after my last contact with my lawyer in the divorce case), I have never had a copy of it and, to the best of my knowledge, information and belief, never saw the original or a copy until my deposition in this action; at my deposition, Defendant produced only a copy, not the original; although I cannot be certain until I see the original, I do not believe that I signed the document;

(b) With respect to Exhibit "B1", my handwritten note that bears the date of April 17, 1987, I made it contemporaneously with a conversation with Eddie Morris; Defendant's recently fabricated claim in his Supplement that "Garratt" made to me any of the statements (*e.g.*, demanding a release) contained in the first nine lines of that exhibit are false; a review of the original exhibit will show that the first nine lines are in black ink and the last two lines are in red ink (and were written at a later time). The notes in black ink including the references to Garratt's offer were statements that Eddie Morris attributed to Garratt, not statements that Garratt ever made to me. The only statement on Exhibit "B1" that Garratt made to me was the statement in the last two lines of Exhibit "B1" which is written later in red, not black, ink.

(c) With respect to Exhibit "B2", that note/letter to my attorney Mark Hafeli dated April 16, 1987 was dictated to me by Eddie Morris. I clearly recall Eddie Morris standing over me and insisting that I write word for word that letter to my

attorney stating exactly what Eddie Morris was saying. When I hand wrote that letter at Defendant Eddie Morris' insistence, I did not have in my possession the settlement documents the letter claims were attached.

(d) With respect to Exhibit "B3", those notes were made by me on the date the "Property Settlement" was signed and relate to several conversations that day, not just one conversation. Garratt did state in my presence that the release language in the divorce judgment did not release the law firm; that fact is consistent with the fact that he never demanded that I sign any release. Eddie Morris' statement to me that he would testify was not a statement made in the presence of Garratt or Evans. Also, outside the presence of Garratt and Evans, Eddie Morris — not Garratt or Evans — told me that he, Eddie Morris, would be fired if he, Eddie Morris, did not include a release for himself in the divorce judgment. I now realize that those statements by Eddie Morris were false. The final note on that page (*i.e.* that Eddie Morris told me that, if I did not sign the papers with release language supposedly drafted by Garratt, Eddie would run up my legal bills as far as Eddie could and make sure I got essentially nothing) is a true statement of what Eddie Morris said to me, again outside the presence of Garratt and Evans, neither of whom told me that. I have since learned, as can be seen by the Affidavit of Mr. Garratt filed simultaneously herewith, that Garratt had nothing whatsoever to do with the drafting of release language in the "Default Judgment".

(e) With respect to Exhibit "B4", I did receive such a letter From Mr. Garratt. However, as is clear from that letter, my lawyer had advised me to sign nothing else. Consequently, if I signed Exhibit "B", as Defendant claims I did, I signed it without the advice or consent of my lawyer.

(f) With respect to Exhibit "C", I had no prior or concurrent knowledge of my sister writing that letter or any portion of it; I never contended that she or her husband were entitled to any

benefits under the judgment of divorce; I do not now and never have controlled what my sister does and she is not my agent .

(g) With respect to Exhibits "F" and "G", I never saw a copy of the same until the time of Eddie Morris' deposition in this action.

(h) With respect to Exhibits "H", "I", "J", and "K", I had no prior or concurrent knowledge of my sister writing those letters; I never contended that she or her husband were entitled to any benefits under the judgment of divorce; I do not now and never have controlled what my sister does and she is not my agent .

(i) With respect to Exhibit "L", Defendants' purported accounting for the division of "marital assets", it is false and misleading. Following are some of the most significant falsehoods. First, it does not reflect that Eddie Morris had a $10,000 equity in Lot 218 of Deerwood II which he "equitably" owned and titled in Defendant Donna Piotrowski's name. Second, it does not reflect the fact that I entered the marriage with assets worth at least $20,000 (my equity in the condominium that Eddie Morris had me sell to his father, Defendant Edsel Morris, for a bargain price) while Eddie Morris entered the marriage with zero assets. Third, Defendants' accounting purports to deduct $11,000 from the $62,000 that Defendants admit Eddie Morris received; while it is true that Eddie Morris received $19,000 of a possible $30,000 from the sale of the house, it does not follow that $11,000 should be deducted from his actual receipts (which include not the $30,000 potential receivable but, rather, the $19,000 actually received). Fourth, Defendants have purposely failed to list assets specified in the "Property Settlement" agreement as going to Eddie Morris merely because the "Property Settlement" agreement that he prepared does not state a value for such assets; for example, under paragraph 7 of the "Property Settlement" Eddie Morris was to receive

Centerior Electric stock but, because no value was stated in the "Property Settlement" that Eddie Morris prepared, no value is attributed to that in Defendants' accounting (Exhibit "L"). Fifth, Defendant attributes to me a $14,000 figure which he now claims is an attorney fee relating the recovery on a personal injury claim of my son in 1984 or 1985. Defendant conveniently fails to mention that the law firm, who represented my son in that matter, never expected or claimed entitlement to any attorney fee. If anyone had been entitled to an attorney fee for that representation, it would have been the law firm, not me or Defendant Eddie Morris. Sixth, Defendants' accounting attributes to me the receipt of $10,000 worth of furniture with Defendant receiving nothing; in fact, I had much furniture prior to the marriage and, while I did receive more than half of the limited furniture acquired during the marriage, that furniture did not cost $10,000; Defendant agreed that the marital furniture was equitably split when I forgave his $1,000 debt due me in mid 1988 (See attached exhibit); one can be sure that if Defendant's equitable share of the marital furniture was worth substantially more than $1,000, Eddie Morris would never have agreed to forego receipt of his one-half share to cancel such a relatively small, $1,000 debt.

(i) As For Exhibits "M" and "N", the dates of those documents and the use of those documents are considerably different than Defendant's recent fabrications claim. Exhibit "N" was a handwritten note from Mr. Garratt delivered to me on January 26, 1987, prior to the commencement of any divorce action. Exhibit "M", on the other hand, is in Eddie Morris' writing; I never saw it or anything like it at any time prior to Eddie Morris' deposition in this case; it appears to be Eddie Morris' draft in April, 1987 of a letter that he proposed that Garratt deliver to me to induce me to accept Eddie Morris' divorce settlement offer; in that regard, Exhibit "M" expressly refers to "your divorce settlement with Ed Morris."

Obviously, given the timing of events, Exhibit "M" (which refers to an accomplished or imminent divorce settlement) could not have been prepared until April of 1987, three months after the date of and my receipt of Exhibit "N". Therefore, the following sworn statement in Defendant's pleadings is another example of his recent fabrications:

> Garratt evidently followed Defendant's suggestion, and gave Plaintiff such a letter."

Obviously, Garratt cannot "follow" on January 26, 1987 (no divorce case pending) a "suggestion', of Morris that Morris could not have made until three months later (divorce case settlement imminent).

Elizabeth A. Bechtold

Subscribed and sworn to before me
this 14th day of December, 1989.

Alicia A. McCully, Notary Public
Oakland County, Michigan
My commission expires: 03/06/91

Appendix B-0
B-0.15
Affidavits and Papers Filed In The Trial Court
STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff, Honorable Charles Kaufman

-VS.-

EDDIE M. MORRIS, EDSEL MORRIS, AND DONNA PIOTROWSKI
Defendants. Civil Action No. 89-909989-CZ

C. WILLIAM GARRATT (P13858)
Garratt & Evans, P.C.
Attorney for Plaintiff
300 East Long Lake Road
Suite 375
Bloomfield Hills, Michigan 48013
645-1450

KENNETH B. MCCONNELL (P17326)
Of Counsel To Eddie M. Morris

E. MICHAEL MORRIS (P31547)
In Pro Per

KENNETH J. MORRIS (P17983)
Attorney for Defendants
Edsel Morris and Donna Piotrowski

AFFIDAVIT OF C. WILLIAM GARRATT

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

C. William Garratt, being first duly sworn, deposes and says:

Appendix B-0

B-0.16

Affidavits and Papers Filed In The Trial Court

1. I am and continuously since 1967 have been an attorney duly licensed to practice in the State of Michigan and a member of the following law firms: Jaffe, Snider, Raitt, Garratt & Heuer, P.C., C. William Garratt, P.C. also known as C. William Garratt & Associates, P.C., Garratt & Morris, P.C., Garratt, Morris & Evans, P.C., and Garrett & Evans, P.C.

2. I have read Plaintiff's First Amended Complaint,Plaintiff's prior and contemporaneous affidavits in this action, and the other affidavits of Kathleen Trepte, Peggy Strutz, Eric McCann, Mark Hafeli, Mark D. Evans, and Plaintiff being filed contemporaneously herewith; to the best of my knowledge, information and belief, all of the statements in those affidavits are true.

3. To whatever extent that Defendant Eddie Morris' affidavits and pleadings state facts that are expressly contradictory to those affidavits, his statements are, to the best of my knowledge, information and belief, false.

4. Because of my professional commitments between my receipt of Defendants' pleadings on Monday, December 11, 1989 and the due date of this Affidavit, December 14, 1989, it is physically impossible for me to detail each and every false statement in Defendant's pleadings and each and every fact to disprove same. However, for the sake of illustration but not by way of limitation, the following should serve as concrete examples:

(a) I never demanded that Eddie Morris include in his divorce settlement with his wife, whether in a property settlement agreement or divorce judgment, any "release" for his benefit; as pointed out in Plaintiffs' contemporaneous Affidavit, filed herewith, Eddie Morris apparently made false statements to Plaintiff to that effect that I had made such requests. I believe that Eddie Morris constantly attributed to me in conversations with Plaintiff during the first four months of 1987 a series of veiled or obvious threats about what I supposedly would or would not do when, in fact, I made no such threats. At all times during the course of the Morris' divorce action, it was

my desire that either the Morrises remain productive employees of the law firm; to that end, I caused the law firm to pay a $10,000 bonus in an attempt to facilitate a settlement; at the time, I thought it was possible, and I wanted, to retain their friendship but their employment with the law firm;

(b) one of the many examples of Eddie Morris' recent fabrications in his papers filed with this Court appears at page 38 of his "Supplement" which states:

> Garratt evidently followed Defendant's suggestion [Defendant's Exhibit "M"] and gave Plaintiff such a letter [Defendant's Exhibit "N"].

Exhibit "N" is my note to Plaintiff on January 26, 1987 — before any divorce action was pending between the Morrises — to give Plaintiff some reasonable assurance of employment security; at Eddie Morris' request, the law firm either had hired or was about to hire a new bookkeeper to replace Plaintiff in that function. Exhibit "M", on the other hand, is something that was entirely an Eddie Morris concoction; in April of 1987 he drafted it without my prior knowledge and requested that I write and sign such a letter to Plaintiff, to induce her to accept whatever divorce settlement offer he was making to her at the time it was written (three months after Exhibit "N"). To the best of my knowledge, information and belief, Plaintiff never saw Exhibit "M" and I never saw Exhibit "M" again until Eddie Morris' deposition in this action when produced the original thereof;

(c) substantially prior to February 17, 1988, Eddie Morris told me that he had not disclosed to Plaintiff the fact that he equitably owned in his sister's name — and had a $10,000 equity in — a "Deerwood" subdivision lot which he had purchased as a prospective homesite for himself and Wendy Meyer, with whom he began a romantic relationship in 1986 that lasted until after April of 1987 and whom he intended to marry after he and she had each obtained a divorce; attached is copy of a $12,650 check dated February 12, 1987 that I

believe Eddie Morris used indirectly to close the purchase of the lot on February 13, 1987; I knew nothing of the events that transpired between Plaintiff and Eddie Morris on February 17, 1988 until after Plaintiff had negotiated and deposited the $1,500 check; shortly thereafter, as indicated in Exhibit "D" to Defendant's documents (Plaintiff's handwritten notes), Plaintiff and Eddie Morris came to me to discuss her dissatisfaction with the following:

(i) she said, and he acknowledged, that initially (before she endorsed and deposited the check) Eddie Morris claimed to have told her everything he knew about the Deerwood lot;

(ii) she said, and he acknowledged, that, after depositing the check, she asked him a few more questions, but he refused to discuss the subject;

(iii) then she had learned for the first time from her sister that he, Eddie Morris, and his girlfriend Wendy Myer had been seen walking a lot in Deerwood; and

(iv) she suspected that Eddie Morris had lied to her about the Deerwood lot, that he had some financial interest in a Deerwood lot, and that he had tricked her into endorsing his check

After they had left my office, I spoke to Eddie Morris privately, and demanded to know what exactly he had told Plaintiff about the Deerwood lot and what exactly was written on the back of the check (because it was obvious from her statements to me in his presence that she had thought the $1,500 check merely released Eddie Morris' obligation to pay her the same amount a few months later, nothing else). After concluding my conversation with Eddie Morris, I went to speak with Plaintiff and ascertained what, according to her, Eddie Morris had told her about the lot and the check. As a result, it was obvious to me that:

(a) Eddie Morris had lied to Plaintiff when he gave her the check, both as to the meaning of the "release" language and as to the facts concerning the Deerwood lot; and

(b) Eddie morris had not told Plaintiff what he had told me the truth to be, namely, that he had a $10,000 or greater equity in the Deerwood lot.

I then told Eddie Morris privately in no uncertain terms that he "defrauded" her or words to that effect. Eddie Morris did not deny that he had defrauded Plaintiff but tried to excuse his conduct by claiming that she supposedly had received most of the marital assets. When Plaintiff privately asked me what to do, I told her that, if I were in her shoes, I would write a check to Eddie Morris in the same amount ($1,500) as his check (the day before) to her and give it to him together with a note stating what she believed. It is my understanding that she did so by delivering to him on February 18, 1988 an original check for $1,500 and a note, a copy of which is attached hereto as Exhibit "A"; and

(d) contrary to Defendant Eddie Morris' misrepresentations to this Court, I did not draft the any release language in the *Morris* v *Morris* divorce judgment; if the release language in the divorce judgment is identical to the release language in the prior *Garratt* v *Garratt* divorce judgment entered in 1985, William Hampton (the then lawyer for my ex-wife) drafted the language; Mr. Hampton had it included in my 1985 divorce judgment over my objection. (Perhaps in 1987, Eddie Morris lifted it out of my prior divorce judgment and put it in his proposed judgment in *Morris* v *Morris*.)

6. As a result of the time constraints set forth below, I was unable to obtain more affidavits, spend more time on Plaintiff's papers, or perform more legal research — by the date hereof — as a result of which Plaintiff has been prejudiced:

(a) by virtue of a court order in another case pronounced on November 29, 1989, December 14, 1989 was and is set aside

for depositions; the date was set by the Court even though I requested an earlier date;

(b) in order to make that deposition as meaningful as possible, I scheduled another deposition in the case to occur the preceding afternoon, namely, Wednesday afternoon December 13; although that deposition was aborted by the deponent Eddie Morris, I did not know that he intended to do so until I had spent the forenoon preparing and the deposition had already commenced; I spent most of the remainder of the afternoon preparing a motion for sanctions and other relief as a consequence of his misconduct; and

(c) a portion of Tuesday, December 12 was expended taking the partial deposition in this action of Defendant Eddie Morris' former fiance Wendy Meyer concerning the subject matter of the releases as to the Deerwood lot and other items; the balance of Tuesday was spent on other professional commitments that could not be avoided or postponed — as was the afternoon of Monday when Defendants' motions, affidavits and other papers arrived periodically, but late.

_____

C. William Garratt

Subscribed and sworn to before me
this 14th day of December, 1989.

_____

Alicia A. McCully, Notary Public
Oakland County, Michigan
My commission expires: 03/06/91

1025b

Appendix B-0
B-0.21
Affidavits and Papers Filed In The Trial Court
STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD, Plaintiff,	Honorable Charles Kaufman
-VS.-	
EDDIE M. MORRIS, EDSEL MORRIS, AND DONNA PIOTROWSKI Defendants.	Civil Action No. 89-909989-CZ

C. WILLIAM GARRATT (P13858)
Garratt & Evans, P.C.
Attorney for Plaintiff
300 East Long Lake Road
Suite 375
Bloomfield Hills, Michigan 48013
645-1450

KENNETH B. MCCONNELL (P17326)
Of Counsel To Eddie M. Morris

E. MICHAEL MORRIS (P31547)
In Pro Per

KENNETH J. MORRIS (P17983)
Attorney for Defendants
Edsel Morris and Donna Piotrowski

PLAINTIFF'S RESPONSE TO DEFENDANT EDDIE M. MORRIS' MOTION TO COMPEL DISCOVERY AND FOR ENTRY OF ORDER

and

PLAINTIFF'S REQUEST FOR SANCTIONS AGAINST DEFENDANT EDDIE M. MORRIS

Appendix B-0
B-0.22
Affidavits and Papers Filed In The Trial Court

Plaintiff by and through her attorneys Garratt & Evans, P.C. states as and for her Response To Defendant Eddie M. Morris' Motion To Compel Discovery, etc. as follows:

INTRODUCTION

This Response is an effort by Plaintiff to cite numerous facts, with detailed substantiation, not argument, in an attempt to try to set the record straight to show that Defendants are lying to and attempting to deceive this Court. While the captions of the following sections may appear

Clarkston when both she (Doral Income Tax Services) and her husband (a glass company) own established businesses near their home in Westland and their children are enrolled in private schools in Westland. Why wasn't Defendant Donna Piotrowski's husband a purchaser of that lot? Even more incredibly, why did Defendant Eddie M. Morris secure a $12,500 check to himself from the Garrett law firm just one day prior to the February 13, 1987 closing on the purchase of the lot? Plaintiff contends that that $12,500 check, a marital asset owed by the law firm to Defendant during 1986 [before the divorce], was secured on February 12, 1987 so that $10,000 of that money could be used as the down payment on that lot. Plaintiff expects to prove during the course of discovery in this action that, in fact, Defendant Eddie M. Morris purchased the aforesaid lot with marital assets as the future site of the marital residence of Defendant and his female friend as soon as his and her divorces were final. Defendant admits in his testimony that he took over payments on the lot shortly after the divorce action was concluded but did not, until nearly a year later, "reimburse" his sister for the $10,000 down payment she had allegedly made. Clearly, Defendant Eddie M. Morris must have made that $10,000 down payment himself on or about February 12, 1987 or he would have promptly reimbursed his sister for same when he took over payments on the lot shortly after the conclusion of the divorce action.

9. It is essential to Plaintiff's preparation of her response to Defendant's Motion To Dismiss which is presently scheduled for December 18,1989 that Plaintiff receive responses to the aforesaid questions as well as numerous other questions. In addition, it is essential that Plaintiff be allowed to take the depositions of Defendant for the reasons set forth above. However, Defendant Eddie Morris was permitted to submit questions and did submit questions to counsel Kenneth Morris for purposes of that deposition.

WHEREFORE, Plaintiff prays that this Honorable Court make and enter an order:

(a) denying Defendant's Motion To Compel Discovery;

(b) prohibiting Defendant Eddie Morris from conducting Plaintiff's deposition;

(c) ordering that the depositions of all Defendants be completed prior to Plaintiff submitting to further deposition;

(d) sanctioning Defendant Eddie M. Morris for the misrepresentations he made to the Court on December 1, 1989; and

(f) entering an order that sets forth all of the Court's rulings at the December 1, 1989 motion hearing.

GARRATT & EVANS, P.C.

By: _____
C. William Garratt (P13858)
Attorneys for Plaintiff
300 East Long Lake Road
Suite 375
Bloomfield Hills, Michigan 48013
645-1450

Dated: December 7, 1989

1000b

Appendix B-0
B-0.25
Affidavits and Papers Filed In The Trial Court
STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD, Plaintiff,	89-909989 CZ 4/20/89 JDG: CHARLES KAUFMAN
-VS.-	
EDDIE M. MORRIS, EDSEL MORRIS, AND DONNA PIOTROWSKI Defendants.	BECHTOLD ELIZABETH A VS MORRIS EDDIE M

C. WILLIAM GARRATT (P13858)
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Of Counsel To Eddie M. Morris
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(313) 645-1710

E. MICHAEL MORRIS (P31547)
In Pro Per
2000 N. Woodward, Suite 100
Bloomfield Hills, MI 48013
(313) 645-1106

KENNETH J. MORRIS (P17983)
Attorney for Defendants
Edsel Morris and Donna Piotrowski
27840 Plymouth Road
Livonia, MI 48150
(313) 425-9055

AFFIDAVIT OF EDSEL MORRIS

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

I Edsel Morris, being first duly sworn, deposes and states:

1. I am the father of Eddie Morris, and am also a Defendant in this matter.

2. I categorically deny ever concealing any marital assets from Elizabeth Bechtold. Among other things, during his marriage to Ms. Bechtold, I never held any money for Eddie Morris; I never concealed, or attempted to conceal, any stock which belonged to Eddie Morris from Elizabeth Bechtold; and I never, in any manner whatsoever, concealed, or attempted to conceal, the existence of a residential lot from Elizabeth Bechtold.

3. In fact, I was unaware, until, I believe sometime in 1988, long after the divorce between Ms. Bechtold and my son was final, that a residential lot had been purchased by my daughter, Donna Piotrowski, in Clarkston, Michigan. I do remember loaning Donna approximately $8,000 sometime in early 1987, but I do not recall her advising me what the loan was for. I do know that I never spoke with the Plaintiff Elizabeth Bechtold about the lot, and consequently would never had represented anything to her about that lot.

4. I never, on any occasion, ever refused to sell Elizabeth Bechtold the condominium that I originally purchased from her in 1981. In fact, to the best of my knowledge, information and belief, there were no efforts made by Elizabeth Bechtold, either during or after the divorce, to exercise an option which I understood was given her to purchase that condominium. In fact, on the contrary, I remember being advised that Elizabeth Bechtold had selected and purchased another condominium in Clarkston, Michigan, and therefore would not be re-purchasing the condominium.

5. Elizabeth Bechtold never asked me to sell her back the condominium, and I received absolutely no communication to this effect.

6. I categorically deny being part of any conspiracy to conceal marital assets. The claim has absolutely no merit whatsoever. I find it extremely upsetting that Elizabeth Bechtold could make such allegations, which have no basis in truth whatsoever. There was no reason, in my opinion, for Elizabeth Bechtold to sue me. I have worked as a railroad conductor for 39 years, and have earned every penny that I own. At no time did I ever agree to hold, or hold, any assets, money or anything of value whatsoever for Eddie Morris in order to conceal the items or assets from Elizabeth Bechtold.

7. If sworn as a witness, I can testify competently to the facts set forth herein.

EDSEL MORRIS

Subscribed and sworn to before me
this 10th day of December, 1989.

JULIE A. RAYMOND, Notary Public
Oakland County, Michigan
My Commission Expires: 03/15/92

Appendix B-0
B-0.28
Affidavits and Papers Filed In The Trial Court
STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD, Plaintiff,	89-909989 CZ 4/20/89 JDG: CHARLES KAUFMAN
-VS.-	
EDDIE M. MORRIS, EDSEL MORRIS, AND DONNA PIOTROWSKI Defendants.	BECHTOLD ELIZABETH A VS MORRIS EDDIE M

C. WILLIAM GARRATT (P13858)
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KENNETH J. MORRIS (P17983)
Attorney for Defendants
Edsel Morris and Donna Piotrowski
27840 Plymouth Road
Livonia, MI 48150
(313) 425-9055

AFFIDAVIT OF DONNA PIOTROWSKI

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

I, Donna Piotrowski, being first duly sworn, deposes and states:

1. I am the sister of Eddie Morris, a defendant in the referenced action.

2. I purchased Lot 218 of Deerwood II Subdivision, a vacant lot in Oakland County, Michigan, in February, 1987. The lot was purchased by funds which I supplied, or borrowed from my father. My brother encouraged its purchase as an investment, but absolutely had no assets or monies involved in that lot during his marriage to the Plaintiff Elizabeth Bechtold. My brother had convinced me that, due to rapid escalation of real estate prices in Clarkston, Michigan, and the widening of I-75 to that area, that, within a one-year period or so, it was possible to perhaps make as much as $10,000 on the lot. I also must say that, for some years, my husband and I have considered the possibility of moving to Oakland County. This idea was later rejected, because both of our businesses are in Wayne County, and would be difficult to move given the customer bases.

3. At the time my brother encouraged me to buy the lot, he indicated that he had been interested in it as an investment. However, because he was going through his divorce, and had virtually no assets at his disposal, and could not have afforded the investment.

4. My brother had absolutely no financial interest in the lot, and no legal rights to the lot, during the course of his marriage to Elizabeth Bechtold.

5. After the divorce of Eddie Morris from Elizabeth Bechtold, I approached him, and told him that my husband and I had decided, instead, to purchase a lot in Westland. I also told him that I did not want to continue to hold the lot in Clarkston for investment purposes. Therefore, I sold the lot to Eddie Morris for the money that I had in the lot, including the money my father had loaned me.

6. It is my best information and belief that when the lot was sold, it ended up in a loss of several thousand dollars.

7. I have never spoken to Elizabeth Bechtold about this lot, and she never inquired about the lot. I have never, at any time, concealed any assets from Elizabeth Bechtold, or made any misrepresentations whatsoever to her.

8. I have never entered into a conspiracy to conceal marital assets from Elizabeth Bechtold, or to hurt her financially in any way.

9. If sworn as a witness, I can testify competently to the facts set forth herein.

/s/ Donna Piotrowski
DONNA PIOTROWSKI

Subscribed and sworn to before me
this 17th day of December, 1989.

/s/ Elizabeth Doyle Morris
Notary Public

Note: An executed copy will be provided prior to or at time of hearing.

Appendix B-0
B-0.31
Affidavits and Papers Filed In The Trial Court
STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff,

Case No. 89-909989-CZ
HON. CHARLES KAUFMAN

-VS.-

EDDIE M. MORRIS, EDSEL MORRIS,
AND DONNA PIOTROWSKI
Defendants.

C. WILLIAM GARRATT (P13858)
Attorney for Plaintiff
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KENNETH B. MCCONNELL (P17326)
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KENNETH J. MORRIS (P17983)
Attorney for Defendants
Edsel Morris and Donna Piotrowski
27840 Plymouth Road
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(313) 425-9055

AFFIDAVIT OF E. MICHAEL MORRIS
IN SUPPORT OF REQUEST FOR ATTORNEYS' FEES

Appendix B-0
B-0.32
Affidavits and Papers Filed In The Trial Court

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

E. Michael Morris, being first duly sworn, deposes and states:

1. I am an attorney duly licensed to practice law in the State of Michigan.

2. I have been an attorney since November, 1980. I graduated from Wayne State Law School, where I was a Note and Comment editor on the *Wayne Law Review*; and, since leaving law school, I have been involved in extensive trial work and complex commercial litigation.

3. Prior to my departure from Garratt's law firm in August, 1988, Garratt was charging clients an hourly rate for my time at $135.00 per hour.

4. Since leaving Garratt's law firm, my hourly rate was established at $125.00 per hour. However, as to both hourly and contingent work which has come to a conclusion since leaving the Garratt law firm, my hourly rate has exceeded, to the best of my knowledge, information and belief, the sum of $150.00 per hour.

5. The fees which I charge for my services are reasonable given the nature of my practice and my experience, as well the marketplace, with which I am familiar.

6. In the entitled action, from November 1, 1989 through December 17, 1989, I expended 141.6 hours performing services. Those hours do <u>not</u> include the time spent between October 19, 1989 and November 1, 1989, and do not include the time spent during the hearing on the motion to dismiss, for sanctions, etc. At $125.00 per hour, this time would equal $17,700.00. At $150.00 per hour, this time would equal $21,240.00.

7. I can affirmatively represent that all services performed on this matter were reasonable and necessary.

8. If sworn as a witness, I can testify competently to the facts set forth herein.

_____
E. MICHAEL MORRIS

Subscribed and sworn to before me
this 20th day of December, 1989.

_____
JULIE A. RAYMOND, Notary Public
Oakland County, Michigan
My Commission Expires: 03/15/92

Appendix B-0
B-0.34
Affidavits and Papers Filed In The Trial Court
STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ELIZABETH A. BECHTOLD,
Plaintiff,

Case No. 89-909989-CZ
HON. CHARLES KAUFMAN

-vs.-

EDDIE M. MORRIS, EDSEL MORRIS,
AND DONNA PIOTROWSKI
Defendants.

C. WILLIAM GARRATT (P13858)
Attorney for Plaintiff

KENNETH B. MCCONNELL (P17326)
Of Counsel To Eddie M. Morris
2000 N. Woodward, Suite 100
Bloomfield Hills, MI 48013
(313) 645-1710

E. MICHAEL MORRIS (P31547)
Defendant, In Pro Per

KENNETH J. MORRIS (P17983)
Attorney for Defendants
Edsel Morris and Donna Piotrowski

AFFIDAVIT OF KENNETH B. MCCONNELL

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

Kenneth B. McConnell, of Bloomfield Hills, Michigan, being first duly sworn, makes this affidavit of his time records in this cause, and he does so based upon his own personal knowledge and he is competent to admissibly testify with factual precision to the matters herein contained.

Appendix B-0
B-0.35
Affidavits and Papers Filed In The Trial Court

1. My shopbook time records reflect the following factual story:

DATE	DESCRIPTION	TIME
10/31/89	Revised pleadings, Complaint; conference with Ed re issues, his proposed response, etc.	3.50
11/08/89	Conference with Ed re motion to Dismiss.	1.50
11/27/89	Conference with Ed re posture.	1.00
11/29/89	To Detroit re more Garrett foolishness; attend deposition of Ed Morris 1:20 - 5:00 p.m.	4.50
12/05/89	Conference with Ed re Motion to Dismiss (supplement).	1.50
12/17/89	Prepare for tomorrow's hearing; plow through 6 lbs. of paper.	4.00
12/18/89	Hearing before Judge Kaufman (9:00 a.m. - 1:00 p.m.); breakfast conference earlier with client.	6.00
	TOTAL	22.00

2. The order that Judge Kaufman entered as submitted by me with the Judge's longhand additions thereto, is fine and no relief from the same is sought. However, the court has my proxy to do anything it deems fair now that it has the hard descriptive facts that were mere representations of mine prior to the entry of the order.

KENNETH B. MCCONNELL

Subscribed and sworn to by me
this 20th day of December, 1989.

_____

M. YVONNE MILLER, Notary Public
Oakland County, Michigan
My Commission Expires: 02/19/90

APPENDIX C

Relevant Michigan Court Rules and Notes[1]

MICHIGAN COURT RULES OF 1985
RELEVANT RULES AND NOTES

CHAPTER 1. GENERAL PROVISIONS

SUBCHAPTER 1.100 APPLICABILITY; CONSTRUCTION

RULE 1.101 TITLE; CITATION

These rules are the "Michigan Court Rules of 1985". An individual rule may be referred to as "Michigan Court Rule _____", and cited by the symbol "MCR _____". For example, this rule may be cited as MCR 1.101.

Staff Comment

* * *

... On July 29, 1983, the Supreme Court ordered that the revised draft be published for comment. See 417A Mich. A committee of judges and lawyers was appointed to review the comments and to advise the Court as to whether further modifications should be made. After the submission of the committee report, the Supreme Court again considered the rules and adopted them in the present form.

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[1]Most of the relevant Michigan Court Rules are contained in Appendix D to the Petition for Writ of Certiorari, and hence, are not duplicated here. However, because Petitioner omitted a key sentence from the comment to MCR 1.101, that portion has been provided here.

* * *

RULE 7.301 JURISDICTION AND TERM

(A) Jurisdiction. The Supreme Court may:

(1) review a Judicial Tenure Commission order recommending discipline, removal, retirement, or suspension (see MCR 9.223-9.226);

(2) review by appeal a case pending in the Court of Appeals or after decision by the Court of Appeals (see MCR 7.302);

(3) review by appeal a final order of the Attorney Discipline Board (see MCR 9.122);

(4) give an advisory opinion (see Const 1963, art 3, Sec. 8);

(5) respond to a certified question (see MCR 7.305);

(6) exercise superintending control over a lower court or tribunal (see, *e.g.*, MCR 7.304);

(7) exercise other jurisdiction as provided by the constitution or by law.

* * *